

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
November 27, 2012

v

SEAN CLARK,

No. 307134
Jackson Circuit Court
LC No. 11-004231-FH

Defendant-Appellant.

Before: BORRELLO, P.J., and FITZGERALD and OWENS, JJ.

PER CURIAM.

After a jury trial, defendant was found not guilty of possession of a firearm during the commission of a felony, MCL 750.227b, but guilty of being a felon in possession of a firearm (felon-in-possession), MCL 750.224f. Defendant was sentenced as an habitual offender, third offense, MCL 769.11, to 28 to 120 months' imprisonment. He appeals as of right. We affirm.

Defendant's conviction arose out of an argument between defendant and his girlfriend, Renee Marie Brown. At trial, Brown testified that she began to argue with defendant after she picked him up from work on Wednesday, March 16, or Thursday, March 17, 2011. Brown testified that defendant held onto a gun during the argument and that, while holding the gun, defendant threatened to kill Brown and her three children. Brown testified that she first saw defendant with the gun a week before the argument, when he ran out of the house chasing someone with it. Brown took defendant to work about 3:00 p.m., on Friday, March 18, 2011, and called the police later that evening. Brown told police about the argument and showed them the gun, located under the mattress on the side of the bed where defendant slept. Upon finding that defendant had a previous felony conviction, officers went to defendant's place of employment and arrested him.

Defendant argues that the prosecution failed to present legally sufficient evidence at trial to sustain his conviction. We disagree. "We review de novo a challenge on appeal to the sufficiency of the evidence." *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). When evaluating the claim, "we construe the evidence in a light most favorable to the prosecution and consider whether there was sufficient evidence to justify a rational trier of fact in finding that all the elements of the crime were proved beyond a reasonable doubt." *People v Phelps*, 288 Mich App 123, 131-132; 791 NW2d 732 (2010). "This Court will not interfere with

the trier of fact's role of determining the weight of the evidence or the credibility of witnesses." *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008).

The elements of possession of a firearm by a felon are: (1) defendant possessed a firearm, (2) defendant was previously convicted of a felony, and (3) defendant's right to possess a firearm had not been restored. MCL 750.224f; *People v Perkins*, 262 Mich App 267, 270-271; 686 NW2d 237 (2004). However, where defendant fails to introduce evidence that his firearm rights have been restored, the prosecution is not required to prove the third element. *People v Perkins*, 473 Mich 626, 640; 703 NW2d 448 (2005). "Circumstantial evidence and reasonable inferences arising therefrom may be sufficient to prove the elements of a crime." *People v Nelson*, 234 Mich App 454, 459; 594 NW2d 114 (1999).

Because both parties stipulated that defendant was a convicted felon, and defendant presented no evidence that his firearm rights were restored, only the first element needed to be proved. *Perkins*, 473 Mich at 640. Regarding possession, Brown testified several times that defendant held a gun while they argued. Brown also testified that she saw defendant with the gun a week before the argument. When police responded to Brown's domestic disturbance call, a gun was found under the mattress on the side of the bed where defendant slept.

Defendant argues that Brown, who was the only eyewitness, was inconsistent and urges that a rational trier of fact could not find possession proved beyond a reasonable doubt based on her testimony. However, as previously noted, the evidence is to be viewed in a light most favorable to the prosecution, *Phelps*, 288 Mich App at 131-132, and our Court "will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses," *Kanaan*, 278 Mich App at 619. Therefore, viewing the evidence in a light most favorable to the prosecution, a reasonable juror could find that the evidence supported the conclusion that defendant had possession of the firearm.

Defendant also argues that the inconsistent verdicts further demonstrate that the evidence was insufficient to sustain a conviction. Defendant concedes that current case law provides that verdicts may be inconsistent, but suggests it is legally impossible for a jury to find the possession element proved beyond a reasonable doubt for one charge but not the other. However, "[j]uries are not held to any rules of logic nor are they required to explain their decisions." *People v Vaughn*, 409 Mich 463, 466; 295 NW2d 354 (1980). Additionally, juries "have the power to acquit as a matter of leniency." *People v Lewis*, 415 Mich 443, 449; 330 NW2d 16 (1982). Therefore, "it is unrealistic to believe that a jury would intend that an acquittal on one count and conviction on another would serve as the reason for defendant's release." *Vaughn*, 409 Mich at 466. In short, viewing the evidence in a light most favorable to the prosecution, a rational juror could find that all three elements of felon-in-possession were proven beyond a reasonable doubt.

Affirmed.

/s/ Stephen L. Borrello
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens