

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAWRENCE E. RICH,

Defendant-Appellant.

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UNPUBLISHED

December 17, 2002

No. 237167

Wayne Circuit Court

LC No. 01-000750-01

Before: Owens, P.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

Defendant appeals as of right his convictions of criminal sexual conduct in the first degree (CSC I), MCL 750.520b, possession of a firearm during the commission of a felony, MCL 750.227b, and felon in possession of a firearm, MCL 750.224f, entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

At trial, complainant, a housekeeper at a motel, testified that she was cleaning a room when a person she identified as defendant came into the room and closed the door. Defendant was holding an object that appeared to be a handgun. Complainant stated that defendant exposed his penis and forced her to perform fellatio on him. Defendant then took some change and left the room. Complainant denied that she wanted to buy drugs from defendant.

Police officers who responded to the motel broadcast a description of complainant's assailant. Shortly thereafter, defendant was arrested at a bus stop. The police recovered a handgun from the area behind the bus stop. Defendant's statement was introduced via the testimony of a police officer. Initially, defendant denied being at the motel or encountering complainant. However, defendant then admitted that he went to the motel to meet someone. He stated that complainant asked if he had drugs to sell, and that she agreed to perform fellatio in exchange for crack cocaine. Defendant denied that he was armed, that he robbed complainant, or that he sexually assaulted her.

The prosecution introduced a certified copy of defendant's prior felony conviction of criminal sexual conduct in the third degree (CSC III), MCL 750.520d. The trial court received it into evidence without objection.

The trial court found defendant guilty of CSC I, felon in possession of a firearm, and felony-firearm, but acquitted him of armed robbery, MCL 750.529. The trial court found

complainant's testimony regarding the incident in the room to be more credible than the statement given by defendant, and it found defendant guilty of CSC I. The trial court found that complainant's testimony regarding defendant's possession of a gun during the incident and the officers' testimony regarding the recovery of the gun was credible, and it found defendant guilty of felony-firearm and felon in possession of a firearm.

When reviewing a challenge to the sufficiency of the evidence in a bench trial, we view the evidence presented in a light most favorable to the prosecution, and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-270, 275; 380 NW2d 11 (1985). The trier of fact may make reasonable inferences from evidence in the record, but may not make inferences completely unsupported by any direct or circumstantial evidence. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

In a bench trial, the court must make findings of fact and state separately its conclusions of law. MCR 6.403. Findings are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). We review a trial court's findings of fact for clear error. MCR 2.613(C); *People v Hermiz*, 235 Mich App 248, 255; 597 NW2d 218 (1999), aff'd by equal division 462 Mich 71; 611 NW2d 783 (2000). A finding is considered to be clearly erroneous if, after a review of the entire record, we are left with the firm and definite conviction that a mistake was made. *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991).

To establish the offense of CSC I, the prosecution must prove that the defendant engaged in sexual penetration with the victim, and that he was armed with a weapon. MCL 750.520b(1)(e). "Sexual penetration" includes fellatio. MCL 750.520a(m). A defendant who carries a firearm during the commission of or the attempt to commit a felony is guilty of felony-firearm. MCL 750.227b; *People v Dillard*, 246 Mich App 163, 170; 631 NW2d 755 (2001). In order to establish the offense of felon in possession of a firearm, the prosecution must prove that the defendant possessed a firearm, that the defendant had been convicted of a specified felony,<sup>1</sup> and that less than five years had passed since the defendant paid all fines imposed for the violation, served all terms of imprisonment served for the violation, and successfully completed all terms of probation or parole imposed for the violation. MCL 750.224f.

Defendant argues the evidence produced at trial was insufficient to support his convictions of CSC I and felony-firearm. We disagree and affirm those convictions. Complainant testified that defendant entered a room at the motel, that he was armed with a handgun, and that he forced her to perform fellatio on him. She stated that defendant maintained possession of the handgun at all times. Complainant's testimony established the elements of CSC I and felony-firearm. MCL 750.520b(1)(e); MCL 750.520a(m); MCL 750.227b. The testimony of a victim in a CSC case need not be corroborated. MCL 750.520h.

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<sup>1</sup> A "specified felony" is defined in MCL 750.224f(6). CSC III qualifies as a specified felony under §224f(6)(i).

The trial court, as finder of fact, was entitled to conclude that complainant's version of the incident was more credible than that given by defendant. *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989). The fact that defendant did not have possession of a gun at the time he was arrested is irrelevant. The determination whether a person possessed a firearm during the commission of a felony requires an examination of the circumstances at the time of the commission of the offense. *People v Burgenmeyer*, 461 Mich 431, 439; 606 NW2d 645 (2000). Complainant's testimony supported the trial court's finding that defendant possessed a firearm during the commission of the felony offense of CSC I. That finding was not clearly erroneous. MCR 2.613(C). The evidence, viewed in a light most favorable to the prosecution, supported defendant's convictions of CSC I and felony-firearm.

Furthermore, defendant argues that no evidence was produced at trial to support his conviction of felon in possession of a firearm. We disagree and affirm that conviction. Contrary to defendant's assertion, the prosecution presented the trial court with evidence of his prior conviction in the form of a certified copy of a judgment of conviction. The judgment indicated that defendant was convicted of CSC III and was sentenced to two and one-half to fifteen years in prison. A certified copy of a public record is admissible as evidence. MRE 902(4). Complainant's testimony that defendant possessed a handgun during the incident in the room and the certified copy of defendant's prior conviction supported the trial court's finding that defendant was a felon and that he possessed a firearm.

A convicted felon is prohibited from possessing a firearm until five years has passed since he had paid all fines imposed, and/or served all imprisonment imposed, and/or completed all conditions of any probation or parole imposed. MCL 750.224f(2)(a). After the five-year period has passed, the convicted felon is prohibited from possessing a firearm until his right to do so has been formally restored under MCL 28.424. MCL 750.224f(2)(b).

The prosecutor must prove that the defendant's right to possess a firearm has not been restored only if the defendant produces some evidence that his right has been restored. CJI2d 11.38a; see also *People v Henderson*, 391 Mich 612, 616; 218 NW2d 2 (1974) (prosecution not required to prove that the defendant has no license to carry a concealed weapon until the accused puts on some evidence to the contrary). Defendant produced no evidence that his right to possess a firearm had been restored. Therefore, the prosecution was not required to prove the contrary beyond a reasonable doubt. The prosecution proved that defendant was a convicted felon and that he possessed a firearm. This evidence was sufficient to support the conviction of felon in possession of a firearm.

Affirmed.

/s/ Donald S. Owens  
/s/ William B. Murphy  
/s/ Mark J. Cavanagh