STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

QUINNE THOMAS HIXON,

Defendant-Appellant.

UNPUBLISHED
December 23, 2003

No. 242768
Wayne Circuit Court
LC No. 01-011191

Before: Fitzgerald, P.J., and Neff and White, JJ.

WHITE, J. (*concurring in part and dissenting in part*).

I concur in the reversal of the felony-firearm conviction. I respectfully dissent from the reversal of the attempted felon-in-possession conviction.

Initially, I reject defendant's first contention on appeal, that there was insufficient evidence of possession to convict him of either offense. Defendant was the driver and sole occupant of a vehicle in which there was a loaded 9 millimeter automatic handgun in the back seat, within defendant's reach. This was sufficient evidence to support a conviction of both offenses.

Defendant further asserts that he is entitled to a new trial as the result of the trial court's inconsistent verdicts. In the body of his argument he asserts that because the court expressly found that the prosecutor failed to prove beyond a reasonable doubt that defendant knew that the gun was in the car, the court could not have found him guilty of attempted felon in possession or felony-firearm, and that the court's finding entitles him to an acquittal.

I agree that the court's finding of guilt of felony-firearm must be reversed. To convict of felony-firearm, the trier of fact must find that defendant knowingly possessed a firearm during the commission or attempt to commit a felony. CJI2d 11.38a. Here, the trial court expressly found that defendant did not knowingly possess the firearm.

Defendant further argues that his conviction of attempted felon in possession must be reversed because a conviction of an attempt requires a finding that the defendant possessed the specific intent to commit the attempted crime. Under the circumstances presented, reversal is not required. Felon in possession is not a specific intent offense. The trier of fact need only find that the defendant was a convicted felon, that less than five years had passed since he completed serving his sentence or probation, and that he possessed, used, transported, sold or received a

firearm. CJI2d 11.38. The court could have found defendant guilty of the charged offense on a finding that he transported the firearm, even without his intending to do so. Here, the court found that defendant "did attempt to transport a firearm when he was ineligible to do so." It appears that the finding of attempt, rather than the completed offense, was focused on the transport element, presumably because defendant was stopped for a traffic stop almost immediately after getting into the car. The court's finding that the prosecutor did not prove beyond a reasonable doubt that defendant knew the firearm was in the car is not fatal to a conviction of felon-in-possession. While the court could have found defendant guilty of the charged offense, and instead found him guilty only of attempt, the court's finding that the prosecution had not shown beyond a reasonable doubt that defendant knew of the gun is not fatal to a conviction of attempt, because the offense is not a specific intent crime. The requisite intent was shown by defendant intentionally driving the car.

At a minimum, the court's findings were ambiguous, and the matter should be remanded as to the felon-in-possession charge, rather than reversed.

I would reverse the felony-firearm conviction and affirm the felon-in-possession conviction, or remand for clarification.

/s/ Helene N. White