

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIE JOHNSON,

Defendant-Appellant.

UNPUBLISHED

December 22, 2009

No. 285482

Wayne Circuit Court

LC No. 07-021195-FH

Before: Gleicher, P.J., and Fitzgerald and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of being a felon in possession of a firearm, MCL 750.224f, carrying a concealed weapon (CCW), MCL 750.227, and possession of a firearm during the commission of a felony (felony-firearm), second offense, MCL 750.227b. The trial court sentenced defendant to concurrent terms of one to five years' imprisonment for the felon in possession and CCW convictions, and a consecutive five-year term of imprisonment for the felony-firearm conviction. We affirm.

Defendant challenges on appeal only the sufficiency of the evidence supporting his convictions. When reviewing a sufficiency challenge, this Court reviews the record de novo in the light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000). "The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *Id.* at 400.

A felon in possession conviction requires proof that the defendant possessed a firearm, the defendant had a prior felony conviction, and either three or five years has elapsed since the conviction, during which the defendant has obtained a discharge from probation. MCL 750.224f(1)-(2). To support a CCW conviction, the prosecution must show that the defendant knowingly possessed a concealed weapon. MCL 750.227; *People v Hernandez-Garcia*, 477 Mich 1039, 1040 n 1; 728 NW2d 406 (2007). Concealment does not equate to "absolute invisibility," but only requires that a weapon not appear readily discernible. *People v Hernandez-Garcia*, 266 Mich App 416, 421-422; 701 NW2d 191 (2005), *aff'd* in part and vacated in part on other grounds 477 Mich 1039 (2007). To sustain a felony-firearm conviction, the prosecution has to prove that the defendant possessed a firearm during the commission or attempted commission of a felony. MCL 750.227b; *People v Avant*, 235 Mich App 499, 505;

597 NW2d 864 (1999). With respect to the underlying felony component of a felony-firearm count, a felon in possession charge can satisfy this requirement. *People v Calloway*, 469 Mich 448, 452; 671 NW2d 733 (2003). Possession of a firearm by a defendant may be actual physical control or constructive possession, which means having physical proximity to a weapon while other indicia of control exist. *People v Burgenmeyer*, 461 Mich 431, 437-438; 606 NW2d 645 (2000).

Defendant suggests that because the prosecution did not adequately demonstrate that he possessed a weapon, a key element of all the charged offenses, we must reverse all his convictions. Defendant identifies the following perceived shortcomings in the trial evidence: (1) one of the arresting police officers needed his memory refreshed before he could identify defendant at trial; (2) the police detected no fingerprints on the gun they allegedly obtained from him; (3) defendant denied at trial that he ran away from the police, thus contradicting their trial recollections; and (4) the testimony of the two arresting officers contained other discrepancies.

After reviewing the record, we find ample evidence reasonably supporting the jury's finding beyond a reasonable doubt that defendant possessed a handgun at the time of his arrest in the early morning hours of October 14, 2007. Both arresting officers similarly recalled at trial that they initially observed defendant as he urinated in the brightly lit parking lot of a Detroit Coney Island restaurant; that defendant was the only individual they observed standing in or near the parking lot; that they pulled their police car directly behind defendant, who began to flee; that defendant fled about 10 or 20 feet before the officers tackled him; and that the officer who then frisked defendant removed a dark blue handgun from the right front pocket of his pants. One of the arresting officers identified defendant with certainty at trial as the person she arrested that morning. The other officer did not initially recall the details of the arrestee's appearance, but after reviewing the contents of his police report the officer opined that defendant matched the arrestee's description. Defendant acknowledged at trial that he was the person the officers approached in the Coney Island's parking lot early on October 14, 2007.

In summary, the trial testimony entirely agreed that the police approached defendant in the parking lot, and the two officers' testimony that they retrieved a dark blue handgun from defendant's front pocket, especially when viewed in the light most favorable to the prosecution, amply proves his actual physical possession of a secreted weapon beyond a reasonable doubt. To the extent that defendant points out the appearance of some evidentiary discrepancies in the trial record, we will not revisit the jury's prerogative to consider what weight to assign the contradictory evidence or its determinations of witness credibility. *Nowack*, 462 Mich at 400. Because the prosecution sufficiently proved defendant's actual possession of a concealed weapon, we conclude that the jury properly found him guilty of all three charged firearm-related offenses.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder