STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 17, 2017
v	No. 333466 Muskegon Circuit Court
MILO SAMON BOOKER, Defendant-Appellant.	LC No. 16-000817-FH

Before: MURRAY, P.J., and SAWYER and MARKEY, JJ.

PER CURIAM.

Defendant appeals by right his jury trial convictions of possession of a firearm while ineligible to do so (felon-in-possession), MCL 750.224f; carrying a concealed weapon, MCL 750.227; and two counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced him as a third-offense habitual offender, MCL 769.11. Defendant was further convicted of resisting or obstructing a police officer under MCL 750.81d(1), but he does not challenge this conviction on appeal. We affirm.

On the night of December 23, 2015, the City of Muskegon Police Department dispatched a report of "shots fired, multiple callers" with the suspect being described as an African-American man wearing a dark jacket with a hood. Officer Daniel Harwood responded to the call and drove to the dispatched area. On the way, he passed defendant, who was the only individual in the area and was wearing a dark jacket and a hoodie. Pulling close to defendant, Officer Harwood activated the signal lights on his police cruiser, got out of the vehicle, and attempted to speak with defendant. Defendant, whose hands were tucked into his right waistband according to Officer Harwood, kept walking and would not comply with Officer Harwood's commands to stop. Officer Harwood testified that defendant told him he was on his way to work and was running late. Officer Harwood further testified that defendant continued to walk away from him until he reached Evergreen Cemetery, at which point he broke into a run. Officer Harwood ran after him and dispatched his position.

The two men zig zagged through the cemetery, but Officer Harwood never lost sight of defendant, who kept his hands tucked in his waistband while running. After what Officer Harwood estimated to be about 50 yards, defendant abruptly stopped, turned around, and put his hands up. At no time did Officer Harwood ever see a weapon in defendant's hands. Further, Officer Harwood testified that he never saw defendant throw away or drop anything during the chase.

After forcing defendant to the ground with the help of Officer Shanda Dziachn, the two searched defendant but did not find a weapon. Officer Harwood then used his flashlight to direct other responding officers toward the path that defendant had run and instructed them to look for a weapon. Within a minute, Officer Tony Miller found a semiautomatic handgun on the ground in the general direction of the path defendant had run. The gun showed no signs of rust or dirt, even though it had been windy and rainy that day. The gun had a magazine with the capacity for seven bullets and four bullets were still in the gun. The calls for service had reported three shots fired.

Defendant argues on appeal that the prosecution presented insufficient evidence for a reasonable trier of fact to find that he possessed the firearm found in the cemetery, and thus the gun related charges could not be proven beyond a reasonable doubt. This Court reviews de novo a challenge to the sufficiency of the evidence. *People v Kosik*, 303 Mich App 146, 150; 841 NW2d 906 (2013). In doing so, "this Court must view the evidence in the 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." *Id.* "All conflicts in the evidence must be resolved in favor of the prosecution and we will not interfere with the jury's determinations regarding the weight of the evidence and the credibility of the witnesses." *People v Unger*, 278 Mich App 210, 222; 749 NW2d 272 (2008).

"Circumstantial evidence and reasonable inferences arising from [] evidence can constitute satisfactory proof of the elements of a crime." *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993). More specifically, the prosecution can prove possession of a firearm through either circumstantial or direct evidence. *People v Johnson*, 293 Mich App 79, 83; 808 NW2d 815 (2011). In addition, a "prosecutor need not negate every reasonable theory consistent with innocence." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Whether a defendant possessed a weapon and whether it was concealed is a question of fact for the jury to decide. *People v Iacopelli*, 30 Mich App 105, 106-107; 186 NW2d 38 (1971). Ultimately, it is not this Court's place to "interfere with trier of fact's role of determining the weight of the evidence or the credibility of witnesses," even if the evidence is largely circumstantial. *People v Williams*, 268 Mich App 416, 419; 707 NW2d 624 (2005).

Possession of a firearm can be established even if the weapon is not found on a defendant's person if the jury could draw reasonable inferences that defendant was at one time in possession. *People v Reynolds*, 38 Mich App 159, 161; 195 NW2d 870 (1972). For example, in *Reynolds*, this Court upheld a conviction for carrying a concealed weapon where a gun was found behind a trashcan and an officer in pursuit reported to have seen the defendant throw something. *Id.* This Court stated that this evidence "is sufficient to permit the jury to find the gun was in defendant's possession." *Id.*

Further, with regard to MCL 750.221(1), concealment does not mean absolute invisibility, but rather exists "when it is not discernible by the ordinary observation of persons coming in contact with the person carrying it, casually observing him, as people do in the ordinary and usual associations of life." *People v Jones*, 12 Mich App 293, 296; 162 NW2d 847 (1968). Whether a defendant concealed a weapon depends entirely on the circumstances of the case. *Reynolds*, 38 Mich App at 161. For example, a firearm can be considered concealed if it is

tucked into a defendant's belt or waistband in a manner in which it is hidden. See *People v Jackson*, 43 Mich App 569, 571; 204 NW2d 367 (1972).

In the present case, there was sufficient evidence for a reasonable jury to find beyond a reasonable doubt that defendant possessed a firearm, possessed it in a concealed fashion, and possessed it while committing a felony. To begin, defendant matched the description of the suspect given by the dispatcher. Next, Officer Harwood testified that defendant's hands were tucked into his front right waistband throughout their entire confrontation, which was significant as it made Officer Harwood "fear[] he was in possession of a firearm" "[b]ased on the nature of the call and the suspect in the area fitting the description." Further, as argued by the prosecution, an obvious reason for defendant's flight would be that he possessed a weapon illegally. This Court has stated that, "evidence of flight is admissible to support an inference of 'consciousness of guilt.'" *People v Goodin*, 257 Mich App 425, 432; 668 NW2d 392 (2003), quoting *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995).

Additionally, after the pursuit ended, officers found a weapon in the general direction of the path that Officer Harwood and defendant had taken within one minute of beginning their search. The weapon showed no signs of wear such rust or dirt, despite the fact that weather conditions were rainy and windy that day, and officers testified that it appeared that the gun had recently been placed there. Finally, the weapon had four rounds remaining in a seven chamber pistol, and a citizen testified that he heard three shots fired originally.

Cumulatively, this evidence "is sufficient to permit the jury to find the gun was in defendant's possession." *Reynolds*, 38 Mich App at 161. While defendant contends that all of the evidence is circumstantial and none of it directly links him to the weapon, the prosecution can prove possession of a firearm through circumstantial evidence. *Johnson*, 293 Mich App at 83. The finding of possession by the jury was a factual one, and this Court will not "interfere with trier of fact's role of determining the weight of the evidence or the credibility of witnesses." *Williams*, 268 Mich App at 419.

Further, in addition to finding defendant possessed a firearm, there was sufficient evidence for a reasonable jury to find that the elements of the corresponding felonies were met. The fact that defendant kept his hands in his waistband is sufficient for a reasonable jury to conclude that defendant knowingly concealed a weapon in a manner that was hidden. See *Jackson*, 43 Mich App at 571. This is particularly true in light of the fact that a weapon was later found near defendant's person after a pursuit, just as in *Reynolds*, 38 Mich App at 161. Further, there was also sufficient evidence for felony-firearm and felon-in-possession convictions, because defendant was a felon[1] and the jury found him to be in possession of a firearm and guilty of resisting or obstructing a police officer under MCL 750.81d(1), a conviction defendant does not challenge on appeal.

Defendant finally argues that the prosecution did not adequately address alleged flaws in the evidence, such as defendant's never being seen with a gun, not having his fingerprints on the

[1] The parties agreed that defendant qualified as a felon under MCL 750.224f(2).

weapon, and no shells ever being found. However, a "prosecutor need not negate every reasonable theory consistent with innocence." *Nowack*, 462 Mich at 400. Rather, it must produce sufficient evidence for a reasonable jury to find beyond a reasonable doubt that defendant was in possession of and concealed a firearm on December 23, 2015. See *Iacopelli*, 30 Mich App at 106-107; *Unger*, 278 Mich App at 222. It did so in this case.

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Jane E. Markey