

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL DEON HUNNICUTT,

Defendant-Appellant.

UNPUBLISHED
November 15, 2011

No. 299653
Kent Circuit Court
LC No. 10-000827-FC

Before: JANSEN, P.J., and SAWYER and SHAPIRO, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of armed robbery, MCL 750.529, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to 3 to 20 years' imprisonment for his armed robbery conviction, and 2 years' imprisonment for his felony-firearm conviction; the sentences are to be served consecutively. Defendant appeals of right the felony-firearm conviction. We affirm.

The trial court analyzed the felony-firearm violation under an aiding and abetting rationale. According to defendant, there is insufficient evidence to show he assisted or encouraged the possession or carrying of a weapon during a felony. We disagree.

Challenges to the sufficiency of the evidence in a bench trial are reviewed "de novo and in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proved beyond a reasonable doubt." *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000). Conflicts in the evidence are resolved in favor of the prosecution. *People v Williams*, 268 Mich App 416, 419; 707 NW2d 624 (2005). A felony-firearm violation occurs when an individual carries or possesses a firearm while committing or attempting to commit a felony. MCL 750.227b; *People v Burgenmeyer*, 461 Mich 431, 437; 606 NW2d 645 (2000).

In the present case, possession of the firearm occurred during an armed robbery committed by defendant and his cousin. The evidence shows that defendant's cousin confronted the victim with a gun and then defendant, wearing a mask, was instrumental in physically

restraining the victim from fleeing so that his cousin could continue robbing the man. The victim's testimony regarding the robbery at gunpoint was corroborated by defendant's flight from the scene with his cousin,¹ the discovery of money in a backyard through which the cousins fled, the winter facemask found on defendant when he was arrested, and the discovery of the gun in the apartment building where the robbery took place.

The evidence supports defendant's conviction under an aiding and abetting theory. The test for aiding and abetting a felony-firearm violation is "whether the defendant 'procures, counsels, aids, or abets in another carrying or having possession of a firearm during the commission or attempted commission of a felony.'" *People v Moore*, 470 Mich 56, 70; 679 NW2d 41 (2004). *Moore* specifically addressed a similar factual situation by stating that *People v Buck*, 197 Mich App 404, 418; 496 NW2d 321 (1992) was wrongly decided. *Moore*, 470 Mich at 68-69, 68 n 16. The defendant in *Buck* "dragged a shooting victim back into reach after being shot so that one of his codefendants could shoot the victim twice more." *Id.* *Moore* stated that these facts supported a felony-firearm conviction under an aiding and abetting theory, because the defendant assisted in the commission of a felony-firearm offense. *Id.* The facts in the present case are similar: defendant prevented the victim from escaping so that defendant's cousin could complete the armed robbery, which involved a firearm.

Accordingly, there is sufficient evidence to sustain a felony-firearm conviction.

Affirmed.

/s/ Kathleen Jansen
/s/ David H. Sawyer
/s/ Douglas B. Shapiro

¹ Evidence of defendant's flight could lead a reasonable trier of fact to infer defendant's consciousness of guilt. *People v Goodin*, 257 Mich App 425, 432; 668 NW2d 392 (2003).