

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
February 21, 2012

v

ALTON RAY RICKS,

No. 300927
Wayne Circuit Court
LC No. 09-020770-FC

Defendant-Appellant.

Before: SAAD, P.J., and K. F. KELLY and M. J. KELLY, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of armed robbery, MCL 750.529, receiving and concealing stolen property (RCSP) valued at more than \$1,000 but less than \$20,000, MCL 750.535(3)(a), possession of a short-barreled shotgun, MCL 750.224b, assault with a dangerous weapon (felonious assault), MCL 750.82, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. He was sentenced as a habitual offender, third offense, MCL 769.11, to 15 to 20 years' imprisonment for the armed robbery conviction, one to five years' imprisonment for the RCSP, possession of a short barreled shotgun, and felon in possession convictions, one to four years' imprisonment for the felonious assault conviction, and two years' imprisonment for the felony-firearm conviction. Because none of defendant's argument on direct appeal or contained in his Standard 4 brief¹ warrant relief, we affirm.

Defendant's convictions arose from the daytime armed robbery of a GameStop Store in Westland. At approximately 11:18 a.m., defendant entered the store with his accomplice, William Charles Wilson, and pointed a sawed off shotgun at the victim. Defendant and his accomplice were both dressed in dark clothing, wore gloves, and covered their faces with bandannas. The robbery was captured on videotape and lasted for approximately ten minutes. First, defendant requested the money from the cash registers. Next, defendant instructed the victim to open the office where the gaming systems were kept. After the gaming systems were removed, he instructed the victim to unlock items from the shelves. During the robbery,

¹ Defendant raised several issues *in propria persona* in a supplemental brief filed pursuant to Supreme Court Administrative Order No. 2004-6, Standard 4.

defendant's hood fell down, and the victim saw that defendant was wearing a doo rag on his head. The victim identified defendant as the armed robber at trial.

A customer entered the store, and defendant pointed the gun at him. Defendant instructed the victim and the customer to aid in loading a blue Chevy Lumina located behind the store. When the victim opened the back door, the alarm was triggered. Police received a dispatch with the description of the robbers and the getaway vehicle. In a nearby apartment complex parking lot, the blue Chevy Lumina was found with the stolen merchandise. A police officer attempted to stop defendant as he suspiciously approached the vehicle, but defendant fled on foot. After a foot chase, defendant was apprehended. The gun used in the robbery was found in the vehicle with the clothing and gloves worn by the robbers. The vehicle used in the robbery was owned by Laverne Bronner-Wilson, the mother of William Charles Wilson. After she recovered her vehicle from the impound lot, she found defendant's wallet containing his identification in her vehicle and turned it over to police.

Defendant first alleges that his convictions for armed robbery and RCSP involving the same merchandise violate constitutional protections against double jeopardy. We disagree. A double jeopardy challenge raised for the first time on appeal is not preserved for appellate review. *People v McGee*, 280 Mich App 680, 682; 761 NW2d 743 (2008). A double jeopardy challenge presents a question of constitutional law subject to de novo review by the appellate courts. *People v Ream*, 481 Mich 223, 226; 750 NW2d 536 (2008). Because double jeopardy issues present a significant constitutional question, it will be considered on appeal regardless of whether it was raised before the trial court. *McGee*, 280 Mich App at 682. "We review an unpreserved claim that a defendant's double jeopardy rights have been violated for plain error that affected the defendant's substantial rights, that is, the error affected the outcome of the lower court proceedings. Reversal is appropriate only if the plain error resulted in the conviction of an innocent defendant or seriously affected the fairness, integrity, or public reputation of the judicial proceedings." *Id.* (footnotes omitted.)

A defendant may not be twice placed in jeopardy or subject to multiple punishments for the same offense pursuant to the United States and Michigan Constitutions. US Const, Am V; Const 1963, art 1, § 15; *People v Smith*, 478 Mich 292, 298; 733 NW2d 351 (2007). When interpreting a constitutional provision, the primary goal is to determine the initial meaning of the provision to the ratifiers, the people, at the time of ratification. *Nat'l Pride At Work, Inc v Governor*, 481 Mich 56, 67; 748 NW2d 524 (2008).

"The Double Jeopardy Clause affords individuals 'three related protections: (1) it protects against a second prosecution for the same offense after acquittal; (2) it protects against a second prosecution for the same offense after conviction; and (3) it protects against multiple punishments for the same offense.' The first two protections are generally understood as the 'successive prosecutions' strand of double jeopardy, while the third protection is commonly understood as the 'multiple punishments' strand." *Smith*, 478 Mich at 299 (citations omitted).

If the Legislature expressed a clear intention to impose multiple punishments, the constitutional protections against double jeopardy are not offended. *Smith*, 478 Mich at 316. When there is no clear legislative intent, to determine if the convicted offenses violated the multiple punishment strand of the Double Jeopardy Clause, it is appropriate to apply the test of

Blockburger v United States, 284 US 299, 304; 52 S Ct 180; 76 L Ed 306 (1932). *Ream*, 481 Mich at 239-240; *Smith*, 478 Mich at 296, 316.

“Where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not. ... A single act may be an offense against two statutes; and if each statute requires proof of an additional fact which the other does not, an acquittal or conviction under either statute does not exempt the defendant from prosecution and punishment under the other.” *Blockburger*, 284 US at 304 (internal citations and quotations omitted).

The elements of armed robbery are: “(1) the defendant, in the course of committing a larceny of any money or other property that may be the subject of a larceny, used force or violence against any person who was present or assaulted or put the person in fear, and (2) the defendant, in the course of committing the larceny, either possessed a dangerous weapon, possessed an article used or fashioned in a manner to lead any person present to reasonably believe that the article was a dangerous weapon, or represented orally or otherwise that he or she was in possession of a dangerous weapon.” *People v Chambers*, 277 Mich App 1, 7; 742 NW2d 610 (2007).

To establish the crime of receiving and concealing stolen property (RCSP), the prosecution must prove “(1) the property was stolen; (2) the value of the property met the statutory requirement; (3) defendant received, possessed, or concealed the property with knowledge that the property was stolen; (4) the identity of the property as being that previously stolen; and (5) the guilty actual or constructive knowledge of the defendant that the property received or concealed was stolen.” *People v Pratt*, 254 Mich App 425, 427; 656 NW2d 866 (2002).

When each offense has an element that the other does not, there is no violation of the multiple punishment strand of the Double Jeopardy Clause. *Ream*, 481 Mich at 240. Consequently, a defendant’s convictions for first-degree felony murder and the predicate felony do not violate the multiple punishment strand of the Double Jeopardy Clause. *Id.* Accordingly, in the present case, the double jeopardy provision was not violated. Armed robbery requires the use of a dangerous weapon or an item fashioned in such a way. *Chambers*, 277 Mich App at 7. RCSP requires concealment or receipt of knowingly stolen property. *Pratt*, 254 Mich App at 427. Because armed robbery and RCSP contain an element that the other offense does not, a double jeopardy violation did not occur. Defendant’s claim of error is without merit.

Next, defendant contends that trial counsel was ineffective for failing to challenge the duplicative armed robbery and RCSP offenses. In light of our conclusion that the double jeopardy provision was not violated, this claim of error does not provide defendant with appellate relief. Trial counsel was not required to raise a frivolous objection. *People v Unger*, 278 Mich App 210, 256; 749 NW2d 272 (2008).

In his Standard 4 brief, defendant alleges that his constitutional protections against double jeopardy were violated in light of his convictions for armed robbery and felony-firearm. In *Smith*, 478 Mich at 295-296, our Supreme Court held that convictions for armed robbery and

felony-firearm did not violate the double jeopardy provision. Defendant's double jeopardy argument regarding his felon in possession and felony-firearm convictions was rejected in *People v Dillard*, 246 Mich App 163, 166-171; 631 NW2d 755 (2001). Additionally, defendant's double jeopardy challenge to his armed robbery and felonious assault convictions was rejected in *Chamber*, 277 Mich App at 9. These issues do not entitle defendant to appellate relief.

Defendant also asserts that the victim's identification was tainted. We disagree. Issues regarding the propriety of identification that were not raised at trial will not be reviewed by this Court unless the refusal to do so would result in manifest injustice. *People v Whitfield*, 214 Mich App 348, 351; 543 NW2d 347 (1995). Identity may be proven by circumstantial evidence alone and is sufficient proof to deliver the case to the trier of fact. *People v Sullivan*, 290 Mich 414, 418-419; 287 NW 567 (1939). Although the issue of the accuracy of identification may cast doubt on the credibility of the witness, it is the province of the jury to determine whether the identification is accurate. See *People v Smith*, 243 Mich App 657, 680; 625 NW2d 46 (2000). Manifest injustice has not been established in light of the ample circumstantial evidence of defendant's guilt. *Sullivan*, 290 Mich at 418-419; *Whitfield*, 214 Mich App at 351.

Finally, defendant argues that he was convicted of an unindicted charge, and we disagree. A review of the amended information and the judgment of sentence reveal that defendant was charged with two separate crimes, possession of a short-barreled shotgun, MCL 750.224b, and felony-firearm, MCL 750.227b.

Affirmed.

/s/ Henry William Saad
/s/ Kirsten Frank Kelly
/s/ Michael J. Kelly