# STATE OF MICHIGAN

# COURT OF APPEALS

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| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>March 15, 2012 |
| v | No. 303256<br>Wayne Circuit Court |
| KEVIN MCGOWAN GOUDLOCK,<br><br>Defendant-Appellant. | LC No. 10-009183-FH |

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Before: O'CONNELL, P.J., and SAWYER and TALBOT, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of two counts of felon in possession of a firearm, MCL 750.224f(2), and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b(1). He appeals by right. We affirm.

Defendant first challenges the sufficiency of the evidence against him. This Court reviews de novo a challenge to the sufficiency of the evidence at a bench trial. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39 (2002). We view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the charged crime was proven beyond a reasonable doubt. *Id*. In our review, "[a]ll conflicts with regard to the evidence must be resolved in favor of the prosecution." *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005).

MCL 750.224f(2) prohibits a person previously convicted of a specified felony from possessing a firearm until his right to possess a firearm has been restored by law. The parties stipulated that defendant was previously convicted of a specified felony and was ineligible to possess a firearm. MCL 750.227b(1) prohibits a person from carrying or possessing a firearm when he commits or attempts to commit another felony. Thus, both offenses require proof that the defendant possessed a firearm. Defendant contends that the evidence was insufficient to prove that he was the person in possession of the firearms.

At trial, Officer Fox testified that as he exited his patrol car, defendant started walking away from him. Fox followed defendant and saw defendant grab his waistband with both hands, raise both hands, and make throwing motions. Fox saw a large object leave defendant's right hand and, using his flashlight, he saw a small gun leave defendant's left hand. Fox then found two guns in the area where defendant had thrown the objects. This evidence was sufficient to

establish beyond a reasonable doubt that defendant possessed the two firearms. Although defense witnesses testified that Justin Wells possessed the guns and disposed of them, the trial court found Fox's testimony to be more credible than that of the defense witnesses. Specifically, the court stated that it did not believe Justin Wells's testimony.

It was up to the trial court, as the trier of fact, to weigh the testimony and assess the credibility of the witnesses. *People v Snell,* 118 Mich App 750, 755; 325 NW2d 563 (1982). "This Court will not interfere with the role of the trier of fact of determining the weight of the evidence or the credibility of witnesses." *People v Hill*, 257 Mich App 126, 140-141; 667 NW2d 78 (2003). Accordingly, we reject defendant's claim that the evidence was factually insufficient to sustain his convictions.

Defendant next argues that the evidence was legally insufficient to sustain his felony-firearm conviction because the crime of felon in possession of a firearm cannot serve as a predicate offense for felony-firearm. Although defendant frames this issue as sufficiency of the evidence, which requires no special action to preserve it for appeal, *People v Patterson*, 428 Mich 502, 514-515; 410 NW2d 733 (1987), defendant actually argues that the issue presents questions of statutory interpretation and double jeopardy. Statutory interpretation is a question of law that we review de novo on appeal. *People v Parker*, 288 Mich App 500, 504; 795 NW2d 596 (2010). Similarly, "[a] double jeopardy issue constitutes an issue of law that is [also] reviewed de novo on appeal." *People v Artman,* 218 Mich App 236, 244; 553 NW2d 673 (1996). However, defendant did not raise these issues below, leaving them unpreserved. *People v Metamora Water Serv, Inc*, 276 Mich App 376, 382; 741 NW2d 61 (2007). This Court reviews an unpreserved claim of error for plain error affecting the defendant's substantial rights. *People v Carines,* 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Under the felony-firearm statute, MCL 750.227b(1), it is a felony to carry or possess a firearm when committing or attempting to commit any felony other than the unlawful sale of a firearm, MCL 750.223, carrying a concealed weapon, MCL 750.227, unlawful possession of a pistol by a licensee, MCL 750.227a, and alteration or removal of identifying marks from a firearm, MCL 750.230. Our Supreme Court has held that this list of four exceptions "is exclusive," *People v Mitchell,* 456 Mich 693, 698; 575 NW2d 283 (1998), and that "the Legislature's intent in drafting the felony-firearm statute was to provide for an additional felony charge and sentence whenever a person possessing a firearm committed a felony other than those four explicitly enumerated in the felony-firearm statute." *Id*. Both *People v Calloway,* 469 Mich 448, 452; 671 NW2d 733 (2003), and *People v Dillard,* 246 Mich App 163, 167-168; 631 NW2d 755 (2001), hold that, in light of *Mitchell,* the Legislature intended to allow the crime of felon in possession of a firearm to serve as the predicate offense for felony-firearm.

We reject defendant's claim that *Calloway* and *Dillard* are undermined by the Supreme Court's later decision in *People v Bobby Smith,* 478 Mich 292; 733 NW2d 351 (2007). In *Smith*, the Court explained that in determining whether convictions of two offenses violate the double jeopardy protection against multiple punishments for the same offense, our courts must look to whether the Legislature expressed a clear intention that multiple punishments be imposed. *Id*. at 316. "Where the Legislature clearly intends to impose such multiple punishments, there is no double jeopardy violation." *People v Garland,* 286 Mich App 1, 4; 777 NW2d 732 (2009).

Both *Calloway* and *Dillard* recognize that MCL 750.227b(1) clearly expresses a legislative intent to impose multiple punishments for both felon in possession of a firearm and felony-firearm. Both cases are binding precedent that we must follow. *People v Tierney*, 266 Mich App 687, 713; 703 NW2d 204 (2005); *Holland Home v City of Grand Rapids,* 219 Mich App 384, 394; 557 NW2d 118 (1996). The precedent holds that the crime of felon in possession of a firearm properly can serve as the predicate offense for felony-firearm. Therefore, we reject defendant's arguments regarding interpretation of the controlling statutes.

Affirmed.

/s/ Peter D. O'Connell
/s/ David H. Sawyer
/s/ Michael J. Talbot