STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 17, 2013
v	No. 312017 Wayne Circuit Court
HERBERT LEE CHANDLER, Defendant-Appellant.	LC No. 12-001756-FH

Before: BOONSTRA, P.J., and DONOFRIO and BECKERING, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of felon in possession of a firearm, MCL 750.224f, carrying a concealed weapon, MCL 750.227(2), and possession of a firearm during the commission of a felony, MCL 750.227b. Because the police officers discovered the firearm during a proper inventory search of a vehicle, and the evidence was sufficient to show that defendant constructively possessed the firearm, we affirm.

I. BACKGROUND FACTS

At approximately 3:00 a.m., Officer Christopher Powell pulled over defendant's vehicle after defendant drove the wrong way on a one-way street in the city of Detroit. Powell asked defendant for his driver's license, registration, and proof of insurance. Defendant did not have a driver's license on him, and the car was not registered in his name. Powell called for backup and arrested defendant for operating a motor vehicle without a license. Defendant was handcuffed and placed in the backseat of Powell's police car. Powell then called a tow truck in order to impound defendant's vehicle. While awaiting the arrival of the tow truck, Powell and Officer David Villerot conducted an inventory search of the vehicle. Villerot found a gun magazine under the driver's seat, and Powell found a holstered handgun in a "nook" underneath the hood of the car. The officers ran the firearm's serial number through the Law Enforcement Information Network and discovered that the gun had been reported stolen. According to Powell, after finding the firearm, defendant stated, "If only the tow truck had gotten here a few minutes earlier." Powell asked defendant what he meant by that statement, and defendant asked whether Powell had to check under the car's hood. Powell responded that he was required to check under the hood as part of an inventory search. Defendant then shook his head and said, "Damn, I thought I could get away with it there."

II. SEARCH AND SEIZURE

Defendant first argues that the handgun recovered during the search of the vehicle should have been suppressed because the warrantless search of the vehicle violated his state and federal constitutional rights against unreasonable searches and seizures. Because defendant did not preserve this issue for our review by moving to suppress the evidence in the trial court, our review is limited to plain error affecting his substantial rights. *People v Cross*, 281 Mich App 737, 738; 760 NW2d 314 (2008). Under the plain error rule, the defendant has the burden to show that (1) an error occurred, (2) the error was plain, i.e., clear or obvious, and (3) the error affected a substantial right. *Id*.

Both the United States and Michigan Constitutions protect against unreasonable searches and seizures. US Const, Am VI; Const 1963, art 1, § 11; *People v Bolduc*, 263 Mich App 430, 437; 688 NW2d 316 (2004). "The lawfulness of a search or seizure depends on its reasonableness." *People v Beuschlein*, 245 Mich App 744, 749; 630 NW2d 921 (2001). Generally, a search conducted without a warrant is unreasonable unless it was conducted pursuant to an established exception to the warrant requirement. *Id.*

Under the inventory exception to the warrant requirement, the police may conduct an inventory search of a vehicle that is being impounded following the driver's arrest. *People v Toohey*, 438 Mich 265, 271-272; 475 NW2d 16 (1991). An inventory search is constitutional "if the underlying arrest was valid and the search was conducted by the police in accordance with standardized department procedures." *People v Houstina*, 216 Mich App 70, 77; 549 NW2d 11 (1996); see also *People v Poole*, 199 Mich App 261, 265; 501 NW2d 265 (1993). The legality of an inventory search of a vehicle also depends on whether the vehicle was lawfully impounded. *Id*. In *Poole*, this Court recognized that the impoundment of a vehicle was proper when the defendant, who had been driving the vehicle, was arrested and the passenger did not have a valid driver's license. *Id.*

In this case, the inventory search of the vehicle following defendant's arrest was proper. Officer Powell stopped defendant's vehicle because Powell witnessed defendant driving the wrong way on a one-way street. Powell arrested defendant when he discovered that defendant was operating the vehicle without a driver's license. Thus, defendant's arrest was valid. See MCL 764.15(1)(a). The impoundment of the vehicle was lawful because defendant had been arrested and his passenger did not have a valid driver's license to operate the vehicle. See *Poole*, 199 Mich App at 265. Further, defendant does not dispute that the officers conducted the inventory search pursuant to standardized department procedures. In any event, Powell testified that the officers followed the standard procedure for inventory searches, and the city of Detroit impound checklist card was admitted into evidence. The card confirmed that the officers were required to look under the hood of the car as part of the inventory search procedure. Thus, the inventory search of the vehicle was constitutionally permissible, and, accordingly, the handgun recovered pursuant to the search was properly admissible as evidence. Although defendant also challenges the search on the basis that it was not a lawful search incident to arrest and, alternatively, argues that the handgun was not admissible under the inevitable discovery doctrine, we need not address those arguments given our holding that the officers recovered the handgun during a lawful inventory search of the vehicle.

III. SUFFICIENCY OF THE EVIDENCE

Defendant next contends that the prosecution presented insufficient evidence to support his convictions. We review de novo a challenge to the sufficiency of the evidence. *People v Lanzo Constr Co*, 272 Mich App 470, 473; 726 NW2d 746 (2006). When reviewing a challenge to the sufficiency of the evidence, "this Court reviews the evidence in a light most favorable to the prosecutor to determine whether any trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt." *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012) (quotation marks and citation omitted). Circumstantial evidence and reasonable inferences that arise from the evidence can constitute satisfactory proof of the elements of an offense. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

All of defendant's convictions required that he possess the firearm that the police recovered from under the hood of the vehicle. See MCL 750.224f; *People v Perkins*, 262 Mich App 267, 270-271; 686 NW2d 237 (2004), abrogated on other grounds in *People v Smith-Anthony*, 494 Mich 669 (2013); *People v Nimeth*, 236 Mich App 616, 622; 601 NW2d 393 (1999); *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). Defendant's sole argument is that the evidence was insufficient to prove the possession element of the offenses.

Possession of a firearm may be actual or constructive and may be proven by either direct or circumstantial evidence. *People v Hill*, 433 Mich 464, 469-470; 446 NW2d 140 (1989). "[A] defendant has constructive possession of a firearm if the location of the weapon is known and it is reasonably accessible to the defendant." *Id.* at 470–471. Proximity to the firearm together with indicia of control are indicative of constructive possession. *Id.* at 470. A defendant's mere presence near a firearm, without more, is insufficient to prove possession. See *People v Wolfe*, 440 Mich 508, 527; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

In this case, the evidence was sufficient to establish that defendant constructively possessed the firearm. Officer Villerot testified that when Officer Powell opened the hood of the vehicle, defendant's eyes were "deadlocked on Officer Powell." After Powell found the weapon, defendant stated, "If only the tow truck had gotten here a few minutes earlier." When Powell asked defendant what he meant by that statement, defendant asked whether Powell was required to check under the car's hood. After Powell responded affirmatively, defendant shook his head and said, "Damn, I thought I could get away with it there." Accordingly, the evidence, viewed in the light most favorable to the prosecution, was sufficient for a rational trier of fact to conclude that defendant possessed the weapon.

Affirmed.

/s/ Mark T. Boonstra
/s/ Pat M. Donofrio
/s/ Jane M. Beckering