

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAMONT ANTHONY COOK,

Defendant-Appellant.

UNPUBLISHED

November 12, 2009

No. 287735

Wayne Circuit Court

LC No. 08-001687-FC

Before: Stephens, P.J., and Cavanagh and Owens, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions for armed robbery, MCL 750.529, carjacking, MCL 750.529a, felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. He was sentenced to 11 to 25 years for the armed robbery conviction and carjacking convictions, two to four years for the felonious assault conviction, and two years for the felony-firearm conviction. We affirm.

Defendant's sole claim on appeal is that there was insufficient evidence to support his felony-firearm conviction. We disagree. When analyzing a claim based on insufficient evidence, this Court reviews the record de novo. *People v Mayhew*, 236 Mich App 112, 132; 600 NW2d 370 (1999). The evidence is viewed in a light most favorable to the prosecutor to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Cline*, 276 Mich App 634, 642; 741 NW2d 563 (2007).

Defendant argues that the prosecution failed to present legally sufficient evidence to support defendant's conviction for felony-firearm. Defendant claims the prosecution did not present any evidence that the firearm at issue was a real firearm or that it was an operable firearm. Defendant argues that the felony-firearm statute requires that the prosecution, as part of its case in chief, prove that defendant had a firearm that was operable. Because the prosecution failed to do so, defendant's felony-firearm conviction should be reversed.

The elements of felony-firearm are that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony. *People v Taylor*, 275 Mich App 177, 179; 737 NW2d 790 (2007). A firearm is a weapon from which a dangerous projectile may be propelled by an explosive, or by gas or air. MCL 750.222(d); *People v Osantowski*, 274 Mich App 593, 610; 736 NW2d 289 (2007), rev'd in part on other grounds 481 Mich 103 (2008).

In the past, there has been some controversy over the definition of a firearm – whether the prosecution has to demonstrate that the firearm at issue is operable – within the felony-firearm statute and other similar statutes. See *People v Brooks*, 135 Mich App 193; 353 NW2d 118 (1984) (“Whether a firearm must be operable to warrant a conviction under the felony-firearm statute is an issue that has been before this Court on several prior occasions.”). Defendant cited to cases regarding the concealed weapons statute where a showing of operability is required. See *People v Huizenga*, 176 Mich App 800, 806; 439 NW2d 922 (1989). This case, however, only concerns the felony-firearm statute. In 2006, the Michigan Supreme Court expressly resolved the issue of operability under the felony-firearm statute. *People v Peals*, 476 Mich 636; 720 NW2d 196 (2006). In *Peals*, the Supreme Court held that the crime of felony-firearm “does not require proof that the firearm was ‘operable’ or ‘reasonably or readily operable.’ Rather, the statute requires only that the weapon be of a type that is designed or intended to propel a dangerous projectile.” *Id.* at 642. The Supreme Court reasoned that requiring a showing of operability would allow a felon to avoid prosecution simply by “separating his firearm into separate parts, hiding a critical part of the firearm, or discarding the firearm immediately after being seen possessing it so that its level of operability could not be determined.” *Id.* at 643. The Court found such a result to be “altogether arbitrary and irrational.” *Id.*

The only issue here is whether the object defendant possessed was itself a firearm or an operable firearm. The prosecution proffered sufficient evidence to demonstrate that the weapon defendant possessed was a firearm. Nakeem Hicks, the owner of the car that was carjacked, identified the gun—that initially was held by Will, defendant’s friend, but ended up in the hands of defendant—as a .38 revolver. Moreover, Hicks testified that defendant hit him on several occasions with the gun, which was made out of metal and was not a toy, and thus, likely designed to propel a dangerous projectile. Moreover, defendant threatened to kill Hicks in the alley, presumably with the firearm, when Will and defendant noticed they were being followed. An eyewitness, Orlando Robinson, corroborated Hicks’ account of the events of the morning of July 19, 2008. Furthermore, if the object was not a firearm, it seems unlikely that defendant would discard it. Viewed in the light most favorable to the prosecution, given that the prosecution was not required to prove operability, the evidence was sufficient for a rational trier of fact to find defendant guilty beyond a reasonable doubt of felony-firearm.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Mark J. Cavanagh
/s/ Donald S. Owens