

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
June 24, 2014

v

ALLEN LYNN CHAMBERS,
Defendant-Appellant.

No. 314348
Wayne Circuit Court
LC No. 12-006188-FH

Before: DONOFRIO, P.J., and GLEICHER and M.J. KELLY, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of felon in possession of a firearm (felon-in-possession), MCL 750.224f, assaulting, resisting or obstructing a police officer, MCL 750.81d(1), and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b(1). Defendant was sentenced, as a third habitual offender, MCL 769.11, to three years' probation for the felon-in-possession conviction, three years' probation for the assaulting, resisting or obstructing a police officer conviction, and two years' imprisonment for the felony-firearm conviction. We affirm defendant's convictions but remand for the ministerial correction of defendant's judgment of sentence.

Defendant first argues that the prosecution failed to present sufficient evidence to convict him, beyond a reasonable doubt, of felon-in-possession and felony-firearm. We disagree.

A challenge to the sufficiency of the evidence is reviewed de novo and in a light most favorable to the prosecution to determine "whether any rational trier of fact could have found 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). "All conflicts with regard to the evidence must be resolved in favor of the prosecution. Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime." *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005) (internal citations omitted).

In regard to felon-in-possession,

"A person convicted of a specified felony shall not possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm in this state *until all of the following circumstances exist*:

(a) The expiration of 5 years after all of the following circumstances exist:

(i) The person has paid all fines imposed for the violation

(ii) The person has served all terms of imprisonment imposed for the violation

(iii) The person has successfully completed all conditions of probation or parole imposed for the violation.

(b) The person's right to possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm has been restored pursuant to [MCL 28.424]." [*People v Perkins*, 473 Mich 626, 635-636; 703 NW2d 448 (2005), quoting MCL 750.224(f)(2).]

Next, "[t]he elements of felony-firearm are that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony. One must carry or possess the firearm when committing or attempting to commit a felony. Possession of a firearm can be actual or constructive, joint or exclusive." *People v Johnson*, 293 Mich App 79, 82-83; 808 NW2d 815 (2011) (quotation marks and citations omitted).

Defendant does not dispute the fact that, at the time of the incident, he had not met the statutory requirements that would permit him to possess a weapon. Instead, he argues that there was insufficient evidence to establish that he actually possessed the weapon. However, the prosecution presented sufficient evidence to prove that defendant did possess the weapon. Jonathon Dennen testified that he saw William Honeycutt hand defendant a black and silver handgun. Dennen also saw defendant hold the weapon in his hand, cock the weapon, and then, after a "moment or two," hand it back to Honeycutt. This testimony was sufficient for the factfinder to find, beyond a reasonable doubt, that defendant was in possession of a firearm.

Furthermore, when police later searched Honeycutt's vehicle, they recovered a black and silver handgun, in the trunk of the vehicle. The handgun was a semi-automatic, which meant that an individual would cock the weapon in order to use it. Defendant argues that reasonable doubt was established because the weapons were discovered in the trunk of Honeycutt's vehicle and Dennen never observed Honeycutt go into the trunk of his vehicle. However, the trial court aptly noted that by the time Honeycutt was detained by police, he would have had an opportunity to put the weapon in the trunk of his vehicle, or alternatively, he could have simply moved the weapon to the trunk when Dennen was not looking. Thus, the location of the weapon when it was discovered later by police was not enough to establish reasonable doubt.

Additionally, felon-in-possession was the predicate felony for his felony-firearm conviction. Accordingly, defendant's possession of a weapon during the commission of that felony was also sufficient to convict him of felony-firearm.

Next, defendant argues, and the prosecution concurs, that the trial court erred by ordering his probationary sentences for both convictions of felon-in-possession and resisting, assaulting, or obstructing a police officer, to run consecutively to his felony-firearm sentence of two years' imprisonment, instead of concurrently. We agree.

Defendant failed to raise this issue to the trial court during sentencing, as required for preservation. *People v Metamora Water Service, Inc*, 276 Mich App 376, 382; 741 NW2d 61 (2007). Therefore, this issue is not preserved for appellate review. An unpreserved issue is reviewed by this Court for a plain error that affected a defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). This Court also reviews "questions of statutory interpretation de novo." *People v Flick*, 487 Mich 1, 9; 790 NW2d 295 (2010).

This Court's decision in *People v Brown*, 220 Mich App 680; 560 NW2d 80 (1996), is directly analogous to the instant case and provides the applicable rule regarding concurrent sentences for felony-firearm and underlying felonies. In *Brown*, the defendant was sentenced to two years' imprisonment for a felony-firearm conviction and five years' probation for the underlying felony, felonious assault, to be served consecutively. *Id.* at 681. This Court held that while sentencing is generally concurrent, a statute can specifically authorize a consecutive sentence. *Id.* at 682. The felony-firearm statute authorized a consecutive sentence, providing:

A term of imprisonment prescribed by this section is in addition to the sentence imposed for the conviction of the felony or the attempt to commit the felony, and shall be served consecutively with and preceding *any term of imprisonment* imposed for the conviction of the felony or attempt to commit the felony. [MCL 750.227b(2) (emphasis added).]

In *Brown*, this Court found that where the underlying felony is given a probationary sentence, instead of imprisonment, the probationary term will run concurrently to the sentence for the felony-firearm conviction. *Brown*, 220 Mich App at 684-685. Thus, in the instant case, because defendant was sentenced to probation, instead of imprisonment, for the underlying felony of felon-in-possession, that sentence must run concurrently to the mandatory two years' imprisonment imposed for his felony-firearm conviction. Finally, the general rule of concurrent sentences, *id.* at 682, applies to defendant's sentence of resisting, assaulting, or obstructing a police officer, and his probation sentence for that conviction should also run concurrently to his felony-firearm sentence.

We affirm defendant's convictions, but we remand for the ministerial correction of defendant's judgment of sentence to reflect that his probationary sentences are to run concurrently to his sentence of two years' imprisonment for the felony-firearm conviction. We do not retain jurisdiction.

/s/ Pat M. Donofrio
/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly