

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

June 28, 1996

Plaintiff-Appellee,

v

No. 182150

LC No. 94-008635

EMILE DEMONE COLE,

Defendant-Appellant.

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Before: Reilly, P.J., and Cavanagh and R.C. Anderson,\* JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of armed robbery, MCL 750.529; MSA 28.797, and unlawfully driving away an automobile (UDAA), MCL 750.413; 28.645. Defendant subsequently pleaded guilty of being an habitual offender, second offense, MCL 769.10; MSA 28.1082, and was sentenced to eight to twenty years' imprisonment. He now appeals as of right. We affirm.

Defendant contends that his convictions for both armed robbery and UDAA constitute multiple punishment for the same offense in violation of the federal and state Double Jeopardy Clauses. We disagree. No double jeopardy violation occurs where a defendant is convicted of both armed robbery and UDAA. *People v Hurst*, 205 Mich App 634, 638-639; 517 NW2d 858 (1994).

Defendant also asserts that it violated the principle of "judicial estoppel" for the prosecution to have charged him with both armed robbery and UDAA. This issue is not preserved for appeal because defendant failed to raise it in his statement of the issues presented. *People v Yarbrough*, 183 Mich App 163, 165; 454 NW2d 419 (1990). Moreover, defendant has cited no authority suggesting that a UDAA conviction is improper where the intent to permanently deprive the victim of her automobile is established. This Court will not search for authority to sustain a party's position. *People v Hoffman*, 205 Mich App 1, 17; 518 NW2d 817 (1994).

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\* Circuit judge, sitting on the Court of Appeals by assignment.

Next, defendant argues that it was inconsistent for the trial court to find him guilty of armed robbery, but acquit him on a charge of felony-firearm, MCL 750.227b; MSA 28.424(2). This argument is without merit. “Conviction of armed robbery requires a finding that the defendant was armed either with a dangerous weapon or with an article used or fashioned in such a manner as to lead a reasonable person to believe that it was a dangerous weapon at the time of the robbery.” *People v Jolly*, 442 Mich 458, 465; 502 NW2d 177 (1993), citing MCL 750.529; MSA 28.797. In contrast, to be convicted of felony-firearm, the defendant must have carried or had in his possession a “firearm.” MCL 750.227b; MSA 28.424(2). A firearm is defined as “any weapon from which a dangerous projectile may be propelled by using explosives, gas or air as a means of propulsion.” MCL 8.3t; MSA 2.212(2). Although the trial court determined that defendant used an article which caused the complainant to reasonably believe that he was in possession of a dangerous weapon, the court was not convinced beyond a reasonable doubt that defendant was in possession of an actual “firearm” as defined under the statute. Thus, the verdicts were not inconsistent.

Lastly, defendant argues that his trial counsel was ineffective in failing to challenge the information as violative of double jeopardy and failing to object to the verdicts on the ground that they were inconsistent. We disagree. Defense counsel was not obligated to argue meritless motions. *People v Daniel*, 207 Mich App 47, 59; 523 NW2d 830 (1994). Defendant has failed to show that counsel’s performance fell below an objective standard of reasonableness and that the representation so prejudiced defendant as to deprive him of a fair trial. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994).

Affirmed.

/s/ Maureen Pulte Reilly

/s/ Mark J. Cavanagh

/s/ Robert C. Anderson