

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICKY LEROY SEALS,

Defendant-Appellant.

UNPUBLISHED
November 8, 1996

No. 186346
LC No. 94-000891-FH

Before: Markman, P.J., and Smolenski and G. S. Buth,* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession of an electronic stun device, MCL 750.224a; MSA 28.421(1). He was sentenced to one to four years' imprisonment, to be served consecutive to his parole violation sentence. He appeals as of right and we affirm.

Defendant first argues that there was insufficient evidence to convict him. When determining whether sufficient evidence has been presented to sustain a conviction, this Court must view the evidence in a light most favorable to the prosecution and 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 Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992).

MCL 750.224a; MSA 28.421(1) provides in relevant part:

(1) A person shall not sell, offer for sale, or possess in this state a portable device or weapon from which an electrical current, impulse, wave or beam may be directed, which current, impulse, wave or beam is designed to incapacitate temporarily, injure or kill.

Defendant asserts that insufficient evidence was presented to establish the possession element. Possession may be proven by circumstantial as well as direct evidence. *People v Hill*, 433 Mich 464, 469; 446 NW2d 140 (1989). The question of possession is factual and is to be answered by the jury.

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

Id. The elements of a weapons possession crime are the intentional possession of the prohibited gun with the knowledge of its character as a weapon. *Id.* at 479. The term “possession” includes both actual and constructive possession. *Id.* at 470. A person has constructive possession if there is some proximity to the unlawful object together with some indicia of control. *Id.* Physical possession is not necessary as long as the defendant has constructive possession. *Id.* at 471.

Officer James Ralston testified that after he stopped defendant’s car, he saw defendant “leaning all the way over in the vehicle” and stuffing something under the passenger seat of the car. Officer David Crown testified that he saw a stun gun on the floor of the passenger side of the car that was partially sticking out from under the seat. Both Officers believed that defendant was trying to shove the stun gun under the seat. Officer Ralston further stated that defendant produced his driver’s license and registration from his pants pocket, rather than from the glove compartment of the car, toward which defendant claimed he was reaching for his license when observed by the officers. Although defendant’s sister, Wendy Seals, stated that the gun was hers and testified that she had not informed defendant as to the presence of the stun gun in her car, she also acknowledged that the last time she saw the stun gun it was in its box and the gun was in the “off” position. Officer Crown stated that the stun gun was not in the box at the time he found it and that it was fully operable with the switch in the “on” position. Although defendant stated that he did not know that the stun gun was in the car, the jury was entitled to weigh the credibility of the witnesses and believe the testimony of the police officers that defendant was trying to shove the stun gun under the car seat. *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988). Moreover, the fact that defendant’s fingerprints were not found on the gun did not preclude the jury from determining that defendant possessed the gun. Detective Randall Ricotta testified that fingerprints are not always found on items that someone has touched. Accordingly, there was sufficient evidence from which a reasonable jury could determine beyond a reasonable doubt that defendant intentionally possessed a prohibited stun gun with knowledge of its character as a weapon.

Defendant next argues that the trial court improperly imposed a consecutive sentence because there was no authority for imposing such a sentence until after the decision of *People v Young*, 206 Mich App 144; 521 NW2d 340 (1994), rev’d in part ___ Mich ___; ___ NW2d ___ (Docket Nos. 101052, 101387-101389, issued 5/29/96), which was decided after defendant committed the offense.¹ We disagree.

MCL 768.7a(2); MSA 28.1030(1)(2) provides:

If a person is convicted and sentenced to a term of imprisonment for a felony committed while the person was on parole from a sentence for a previous offense, the term of imprisonment imposed for the later offense shall begin to run at the expiration of the remaining portion of the term of imprisonment imposed for the previous offense.

MCL 768.7a(2); MSA 28.1030(1)(2) became effective June 1, 1988, and clearly mandates the imposition of consecutive sentencing where a defendant commits an offense while on parole, as occurred in the instant case. Defendant relied on this Court’s holding in *Young*, prior to its reversal, to argue that his consecutive sentence was improper. In that case, this Court held that the sentence for a

parole violation must begin to run at the end of the maximum sentence for the prior offense, rather than at the end of the minimum sentence for the prior offense. *Id.* at 159.² We further stated: “Because this ruling represents a departure from the consistent prior interpretation and application of the Department of Corrections of MCL 768.7a(2); MSA 28.1030(1)(2) to parole violators, it is to be given prospective application only.” *Id.*

However, defendant misinterprets the holding in *Young*. *Young* did not authorize consecutive sentencing when a parolee commits another offense; the statute did that. Rather, the holding in *Young* only dictates *when* a parolee’s sentence for his subsequent offense will begin to run. Prior to *Young*, the Department of Corrections interpreted MCL 768.7a(2); MSA 28.1030(1)(2) to mean that a subsequent sentence should begin to run at the end of a defendant’s minimum sentence for the parole violation. *Young, supra* at 155. This Court in *Young* merely clarified that the sentence should begin to run at the end of the maximum sentence for the parole violation. *Id.* at 159. Therefore, that is the specific holding that can be applied only prospectively. Because the trial court did not indicate whether defendant’s current sentence should begin to run at the end of his maximum or minimum sentence for the parole violation, and because defendant did not raise a challenge to whether his sentence for the current offense should be applied at the end of his maximum or minimum term for the parole violation, the issue in *Young* is not properly before this Court. Accordingly, since the imposition of a consecutive sentence was authorized by MCL 768.7a(2); MSA 28.1030(1)(2), the trial court did not abuse its discretion in sentencing defendant to consecutive terms.

Defendant also argues that the statute under which he was convicted, MCL 750.224a; MSA 28.421(1), violates the title-object clause of the Michigan Constitution, Const 1963, art 4, § 24. Although defendant did not challenge the constitutionality of the statute in the trial court, this Court will nevertheless review an important constitutional question. *People v Heim*, 206 Mich App 439, 441; 522 NW2d 675 (1994), lv den 448 Mich 913; 533 NW2d 584 (1995). Whether a statute violates the title-object clause is subject to de novo review on appeal. *Hobbins v Attorney General*, 205 Mich App 194, 199; 518 NW2d 487, modified 447 Mich 436 (1994).

The title-object clause of the Michigan Constitution provides: “No law shall embrace more than one object, which shall be expressed in its title.” Const 1963, art 4, § 24. The title-object clause requires that the act itself not exceed the scope of its title. *People v Craig*, 131 Mich App 42, 46; 346 NW2d 66 (1983), lv den 419 Mich 868 (1984). A statute will satisfy this requirement if it fairly indicates to a reasonable and inquiring mind its general scope, intent, and purpose. *Id.* A statute likewise satisfies this requirement if the act centers on one main general object or purpose which the title comprehensively declares. *Id.* A statute is presumed constitutional and should be construed reasonably. *People v Rau*, 174 Mich App 339, 344; 436 NW2d 409 (1989). The primary purpose of the title-object rule is to avoid having diverse, unrelated subjects in one act. *Id.*

Defendant was convicted under MCL 750.224a; MSA 28.421(1), which is part of the Penal Code. The title of the Penal Code states:

AN ACT to revise, consolidate, codify and add to the statutes relating to crimes; to define crimes and prescribe the penalties therefor; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act. [1931 PA 328.]

The statute under which defendant was convicted, MCL 750.224a; MSA 28.421(1), indicates that its source is 1931 PA 328, which is the title of the Penal Code. Moreover, 1976 PA 106, which added MCL 750.224a; MSA 28.421(1) to the statute, has the identical title as the Penal Code. The firearm statute as enacted by 1931 PA 328 refers to 1927 PA 372, and that is presumably how defendant concluded that the title of the latter act was the relevant title to use. However, the Legislature enacted two provisions dealing with firearms: one in the Penal Code and one to civilly regulate the licensing, selling and purchasing of firearms. Defendant urges this Court to use the latter title rather than the title of the Penal Code, under which defendant was convicted. However, since defendant was convicted under the Penal Code, we believe that the appropriate title to use to determine if the statute violates the title object clause is the title of the Penal Code.³

The title of the Penal Code indicates to a reasonable mind that its general scope is the defining of crimes and their penalties. Although this is general, within the Penal Code there are chapter headings which more specifically indicate the nature of the covered acts. Specifically, at the beginning of the chapter of the Code dealing with firearms, it states “CHAPTER XXXVII. FIREARMS.” Although a stun gun does not meet the definition of “firearm” as defined by the statute, because it is presumably a weapon from which a dangerous current of electricity may be emitted, the statute would fairly indicate to a reasonable mind that the scope of the firearms section of the Penal Code is to control weapons, including those which emit an electrical current. *Craig, supra* at 46. Therefore, the section of the act prohibiting the possession of a stun gun, MCL 750.224a; MSA 28.421(1), does not violate the title-object clause of the Michigan Constitution.

Affirmed.

/s/ Stephen J. Markman
/s/ Michael R. Smolenski
/s/ George S. Buth

¹ Defendant committed the instant offense in March, 1994, but *Young* was issued in July, 1994.

² The Michigan Supreme Court reversed this Court’s holding, stating that “the ‘remaining portion’ clause of [MCL 768.7a(2); MSA 28.1030(1)(2)] requires the offender to serve at least the combined minimums of his sentences, plus whatever portion of the earlier sentences the Parole Board may, because the parolee violated the terms of the parole, require him to serve.” *People v Young*, ___ Mich ___, ___ NW2d ___ (Docket Nos. 101052, 101387-101389, issued 5/29/96) slip op at 2.

³ Plaintiff argues that 1927 PA 372 was repealed by 1931 PA 328. However, the later act repealed only certain sections of 1927 PA 372, and the title of the act was not listed as repealed.