

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES MICHAEL FORBES,

Defendant-Appellant.

UNPUBLISHED

November 21, 1997

No. 196983

Alpena Circuit Court

LC No. 95-004860-FH

Before: Saad, P.J., and Holbrook and Doctoroff, JJ.

PER CURIAM.

Defendant was convicted by a jury of aggravated stalking, MCL 750.411i; MSA 28.643(9), felon in possession of a firearm, MCL 750.224f; MSA 28.421(6), carrying a firearm with unlawful intent, MCL 750.226; MSA 28.423, transporting a loaded firearm, other than a pistol, in a motor vehicle, MCL 750.227c; MSA 28.424(3), intentional discharge of a firearm from a motor vehicle, MCL 750.234a, MSA 28.431(1), and two counts of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced as an habitual offender, fourth offense, to nine to twenty years' imprisonment for aggravated stalking, nine to twenty years' imprisonment for felon in possession of a firearm, nine to fifteen years' imprisonment for transporting a loaded firearm in a motor vehicle, nine to twenty years' imprisonment for carrying a firearm with unlawful intent, nine to fifteen years' imprisonment for intentional discharge of a firearm from a motor vehicle, and two years' imprisonment for each of the two counts of felony-firearm. He appeals as of right. We affirm.

Defendant first argues on appeal that the evidence was insufficient to support his convictions of aggravated stalking and carrying a firearm with unlawful intent. We review a claim of insufficient evidence by considering the evidence in a light favorable to the prosecution and determining whether a rational trier of fact could conclude that the essential elements of the crime were proven beyond a reasonable doubt. Circumstantial evidence and reasonable inferences may be drawn to provide sufficient proof of the elements of the crime. *People v Reeves*, 222 Mich App 32, 34; 564 NW2d 476 (1997).

MCL 750.411i(2); MSA 28.643(9), provides that an individual who engages in stalking is guilty of aggravated stalking if:

- (c) The course of conduct includes the making of 1 or more credible threats against the victim, a member of the victim's family, or another individual living in the victim's household.

The crime of stalking is defined as:

[A] willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested, and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested. [MCL 750.411i(1)(e); MSA 28.643(9)(1)(e).]

A course of conduct is a pattern of conduct involving a series of two or more separate acts that demonstrate a continuity of purpose. MCL 750.411i(1)(a); MSA 28.643(9)(1)(a). A credible threat is a threat to kill another individual or a threat to inflict bodily injury upon another individual that is made in a manner that causes the person hearing the threat to reasonably fear for his or her safety or the safety of another individual. MCL 750.411i(1)(b); MSA 28.643(9)(1)(b). Harassment is defined as conduct directed towards an individual that is unconsented and repeated contact which would cause a reasonable individual to suffer emotional distress. MCL 750.411i(1)(d); MSA 28.643(9)(1)(d).

Viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could find that the essential elements of aggravated stalking had been proven beyond a reasonable doubt. First, a course of conduct was established by the victim's testimony that defendant repeatedly called her and wrote to her expressing his desire to re-establish their relationship. Second, harassment was established by the victim's testimony that defendant continued to contact her on the phone and at work after she had told him not to contact her again. Third, the crime of stalking is established with the first two elements, plus the victim's testimony that defendant had frightened her so much, that she left town for a few days. Finally, a credible threat is established in the record with the victim's testimony that defendant had threatened to kill her. Therefore, defendant's conviction of aggravated stalking is supported by sufficient evidence.

Regarding defendant's conviction for carrying a firearm with unlawful intent, the elements of that crime are: (1) carrying a firearm, (2) with the intent to use the weapon against another person. *People v Harrington*, 194 Mich App 424, 428; 487 NW2d 479 (1992). Viewing the evidence in this case in a light favorable to the prosecution, a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. First, the police officers testified that defendant had a shotgun in his truck, which he threw out of the driver's side window before he was arrested. Second, a reasonable inference may be drawn that defendant intended to use the firearm against the victim and her son because their names were written on bullets that were found inside defendant's truck. Therefore, the evidence was sufficient to support defendant's conviction of carrying a firearm with unlawful intent.

Defendant next argues that his convictions of felon in possession of a firearm, transporting a loaded firearm in a motor vehicle, intentional discharge of a firearm from a motor vehicle and carrying a firearm with unlawful intent violate the constitutional prohibition of double jeopardy. We disagree. We review issues involving double jeopardy questions de novo. *People v Price*, 214 Mich App 538, 542; 543 NW2d 49 (1995).

The United States and Michigan constitutions protect an individual's right not to be tried for the same offense more than once or to be punished for the same offense more than once. US Const Am V; Const 1963, art 1, § 15. The Double Jeopardy Clause is a limitation placed upon the courts and the prosecutor, not the Legislature. *People v Robideau*, 419 Mich 458, 469; 355 NW2d 592 (1984). Under Michigan law, when the only interest of the defendant is not having more punishment imposed than was intended by the Legislature, the intent of the Legislature is determinative. *Id.* at 485. Statutes that prohibit conduct that is violative of distinct social norms can be viewed as separate and "amenable to permitting multiple punishments." *Id.* at 487. The court must identify the type of harm that the Legislature sought to prevent. *Id.*

The Michigan Legislature has defined the crime of felon in possession of a firearm as follows:

(1) [A] person convicted of a felony shall not possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm in this state until the expiration of 3 years after all of the following circumstances exist:

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

(b) The person has served all terms of imprisonment for the violation.

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

(3) A person who possesses, uses, transports, sells, purchases, carries, ships, receives, or distributes a firearm in violation of this sections is guilty of a felony, punishable by imprisonment for not more than 5 years, or a fine of not more than \$5,000.00, or both. [MCL 750.224f(1) and (3); MSA28.421(6)(1) and (3).]

The Legislature has defined intentional discharge of a firearm from a motor vehicle as:

(1) [A]n individual who intentionally discharges a firearm from a motor vehicle . . . in such a manner as to endanger the safety of another individual is guilty of a felony, punishable by imprisonment for not more than 4 years, or a fine of not more than \$2,000.00 or both. [MCL 750.234a(1); MSA 28.431(1).]

The crime of transporting a loaded firearm in a motor vehicle is defined as:

(1) Except as otherwise permitted by law, a person shall not transport or possess in or upon . . . a motor vehicle . . . a firearm, other than a pistol, which is loaded.

- (2) A person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than 2 years, or a fine of not more than \$2,500.00, or both. [MCL 750.227c; MSA 28.424(3).]

Finally, the Legislature has defined carrying a firearm with unlawful intent as:

Any person who, with intent to use the same unlawfully against the person of another, goes armed with a pistol or other firearm . . . shall be guilty of a felony, punishable by imprisonment in the state prison for not more than 5 years or by a fine of not more than 2,500 dollars. [MCL 750.226; MSA 28.423.]

This Court has never specifically addressed whether convictions of these four weapons offenses violates the Double Jeopardy Clause. However, this Court has determined that convictions of three of these offenses along with a conviction of carrying a concealed weapon, MCL 750.227; MSA 28.424, do not violate the Double Jeopardy Clause. *People v Mayfield*, 221 Mich App 656, 662; 562 NW2d 272 (1997) (felon in possession of a firearm and carrying a concealed weapon). *People v Cortez*, 206 Mich App 204, 206-207; 520 NW2d 693 (1994) (intentional discharge of a firearm from a motor vehicle and carrying a concealed weapon). *People v Davenport*, 89 Mich App 678, 685; 282 NW2d 179 (1979) (carrying a firearm with unlawful intent and carrying a concealed weapon).

The four weapons offenses that defendant was convicted of protect very distinct social norms. The felon in possession statute protects the public from felons with weapons. Like the carrying a concealed weapons statute, the transporting a loaded firearm in a motor vehicle statute protects the public from the accidental discharge of the weapon that could occur during a sudden stop or collision of the vehicle and it protects law enforcement officers from the dangers associated with persons armed in a motor vehicle. The intentional discharge of a firearm from a motor vehicle statute protects the public's interest in preventing the quick escape of the shooter. Finally, the statute prohibiting carrying a firearm with unlawful intent protects the public from persons whether they are in a vehicle or not, whether they are licensed or not, from carrying a weapon when they intend to inflict injury upon another person. Because each of these weapons offenses protects a distinct social norm, defendant's convictions of all four offenses do not violate double jeopardy.

Finally, defendant argues his sentences were not proportional to the offenses or his prior record. We disagree. Appellate review of sentences is limited to whether the trial court abused its discretion in imposing sentence. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990). A trial court abuses its discretion when it violates the principle of proportionality. *Id.* A sentence must be proportionate to the seriousness of the offense and the offender's prior record. *Id.*

In this case, defendant has an extensive prior record, which includes five felonies. He has a long history of alcohol and drug abuse. When he was arrested for these offenses, he was serving a sentence of probation for a 1992 felony. The victim testified that defendant was a violent person. She further stated that she was frightened of him. Furthermore, when defendant was arrested, he was found with a loaded shotgun and shells with the victim's name and her son's name written on them. On this record,

we find defendant's sentences to be proportional. Therefore, the sentencing court did not abuse its discretion.

Affirmed.

/s/ Henry William Saad

/s/ Donald E. Holbrook, Jr.

/s/ Martin M. Doctoroff