

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GEORGE WILLIAM HENRY, JR.,

Defendant-Appellant.

UNPUBLISHED

September 29, 2005

No. 254526

Kalamazoo Circuit Court

LC No. 03-001182-FH

Before: Bandstra, P.J., and Neff and Donofrio, JJ.

MEMORANDUM.

Defendant appeals as of right his jury trial conviction for possession of a firearm during the commission of a felony, MCL 750.227b, and being a felon in possession of a firearm, MCL 750.224f. Defendant was sentenced as a fourth-offense habitual offender, MCL 769.12, to serve consecutive prison terms of two years for the felony-firearm conviction and one to fifteen years for the felon in possession conviction. On appeal, defendant challenges only his conviction for felony-firearm. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

First, defendant argues that his conviction for felony-firearm predicated on felon in possession of a firearm violated his right to be free from double jeopardy.¹ However, as defendant acknowledges, our Supreme Court has flatly rejected this argument. *People v Calloway*, 469 Mich 448, 452; 671 NW2d 733 (2003). Because the decisions of our Supreme Court bind this Court, *People v Hall*, 249 Mich App 262, 270; 643 NW2d 253 (2002), defendant's argument must fail.

Second, defendant argues that the trial court erred in including with its instructions on felony-firearm the following: "Possession for purposes of that felony firearm law may be actual or constructive—It can be proved by circumstantial evidence—and it requires that the weapon be readily accessible to the defendant." Defendant argues that this instruction could have led the jury to convict even if defendant was unaware that a gun was at hand. We disagree. At trial, defense counsel expressly declined to raise any objections to any of the instructions when invited

¹ See US Const, Ams V and XIV; Const 1963, art 1, § 15.

to do so; therefore, this issue has been waived. See *People v Carter*, 462 Mich 206, 214-216; 612 NW2d 144 (2000); *People v Lueth*, 253 Mich App 670, 688; 660 NW2d 322 (2002).

In any event, defendant's argument is without merit. Although not all possible forms of constructive possession of a firearm will support a felony-firearm conviction, the key consideration is whether the firearm was "reasonably accessible" to the offender. See *People v Burgenmeyer*, 461 Mich 431, 437-439; 606 NW2d 645 (2000). In this case, accompanying the instruction that "[p]ossession for purposes of . . . felony firearm . . . requires that the weapon be readily accessible to the defendant" was the instruction that possession "means that either a person has actual physical control of a thing . . . , or . . . that a person has the right to control a thing" Jury instructions must be reviewed in their entirety, "not extracted in a piecemeal fashion." *People v Dabish*, 181 Mich App 469, 478; 450 NW2d 44 (1989). The trial court appropriately advised the jury that a conviction for felony-firearm required possession in the form of ready accessibility. Because one cannot possess something and enjoy ready access to it without knowing of its existence, defendant's argument must fail.

We affirm.

/s/ Richard A. Bandstra

/s/ Janet T. Neff

/s/ Pat M. Donofrio