

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
October 10, 2013

v

DAMON DARTELL BLOCKER,  
Defendant-Appellant.

No. 310644  
Wayne Circuit Court  
LC No. 12-000741-FH

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Before: M. J. KELLY, P.J., and WILDER and FORT HOOD, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of felon in possession of a firearm, MCL 750.224f, carrying a concealed weapon (CCW), MCL 750.227(2), and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. He was sentenced to six months to five years' imprisonment for the felon in possession and CCW convictions, and two years' imprisonment for the felony-firearm conviction. Defendant appeals by right. We affirm.

Defendant's convictions arise from the report by a bus driver of an individual with a gun. Police proceeded to the area in question and found two men matching the description in a local restaurant. Inside the restaurant, an officer saw defendant walk to the garbage can near the door and reach inside the can up to his elbow. However, the officer did not see anything in defendant's hand as he approached the garbage can. The officer asked the men to raise their hands, and a gun was observed on defendant's acquaintance. After the acquaintance was removed, another officer received a report to look in the garbage can. Inside he found a loaded pistol on top of the garbage. Defendant testified on his own behalf and denied that he had a gun on his person or that he deposited it in the trash. He also denied that he was wearing clothing matching the description of a person seen carrying a gun in the vicinity. Despite this testimony, defendant was convicted as charged.

Defendant first contends that the trial court abused its discretion by denying his motion for an adjournment, which he requested in order to retain substitute defense counsel. We disagree.

We review the trial court's decision on a motion to adjourn the trial proceedings for an abuse of discretion. *People v Coy*, 258 Mich App 1, 17; 669 NW2d 831 (2003). The trial court abuses its discretion when it chooses an outcome that falls outside of the range of reasonable and principled outcomes. *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008).

The right to assistance of counsel is guaranteed by the United States and Michigan Constitutions. US Const, Am VI; Const 1963, art 1, § 20. This guarantee permits a defendant a reasonable opportunity to secure counsel of his or her choosing. *People v Humbert*, 120 Mich App 195, 197; 327 NW2d 435 (1982). A motion to adjourn must be premised on good cause. *Coy*, 258 Mich App at 18. The defendant has the burden of showing both good cause and diligence. *Id.* When reviewing a trial court's decision to deny a defendant an adjournment, this Court considers whether the defendant (1) asserted a constitutional right, (2) provided a legitimate reason for asserting the right, (3) had been negligent in asserting the right, and (4) had requested prior adjournments. *Id.* The court must balance the accused's right to counsel of choice and the public's interest in the prompt and efficient administration of justice. *People v Akins*, 259 Mich App 545, 557; 675 NW2d 863 (2003). Even with good cause and due diligence, reversal is not warranted unless the defendant demonstrates that prejudice resulted from the abuse of discretion. *Coy*, 258 Mich App at 18-19.

In light of the record, the trial court's denial of the request for an adjournment did not constitute an abuse of discretion. *Id.* at 17. Although defendant asserted his constitutional right to retain counsel and had not requested prior adjournments, he did not offer the trial court a legitimate reason for asserting that right and defendant failed to diligently exercise the right. Defendant was aware of the upcoming trial date and had nearly four months to prepare and to secure alternative counsel. Yet, his request to adjourn was made on the day the trial was set to commence. Although a criminal defendant "has a constitutional right to defend an action through the attorney of his choice," *People v Portillo*, 241 Mich App 540, 542-543; 616 NW2d 707 (2000), "a defendant may effectively waive his right to retain counsel of his own choice by taking advantage of appointed counsel's services." *Humbert*, 120 Mich App at 197 (further citation omitted). Defendant waived his right to obtain counsel of his choice when he permitted his appointed counsel to prepare a defense on his behalf. Given these circumstances, the public's interest in the efficient administration of justice outweighed defendant's right to retain counsel of his choosing. *Akins*, 259 Mich App at 557.

Moreover, defendant did not establish prejudice. *Coy*, 258 Mich App at 18-19. Even without additional time, defense counsel was able to effectively cross-examine the prosecution's witnesses and present a coherent defense. Furthermore, defendant merely speculates that retained counsel would have been able to secure testimony from a witness at the restaurant where he was apprehended and that the testimony would have been favorable to defendant. There is no indication from the record that retained counsel could have garnered a different result.

We also reject defendant's related argument that the trial court should have granted an adjournment to allow two additional witnesses to appear and testify. Defendant did not request an adjournment to obtain testimony from these two witnesses, and therefore, this claim of error is unpreserved and reviewed only for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 764-765; 597 NW2d 130 (1999). Regarding the officer-in-charge, defendant had a sufficient substitute witness and chose not to call him. With regard to the booking officer, there was sufficient evidence that defendant was in possession of a weapon illegally. Even if defendant had not been wearing the same clothing as the suspect, he was properly apprehended by the police in the course of their investigation. Therefore, defendant failed to demonstrate that there was resulting prejudice. *Coy*, 258 Mich App at 18-19.

Next, defendant asserts that there was insufficient evidence to support his convictions of felon in possession of a firearm, CCW, and felony-firearm. We disagree.

We review de novo a challenge to the sufficiency of the evidence. *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). We must consider the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the elements of the crime were proven beyond a reasonable doubt. *People v Harverson*, 291 Mich App 171, 175; 804 NW2d 757 (2010). Circumstantial evidence and reasonable inferences arising from the evidence can constitute sufficient proof of the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

The elements of felon in possession of a firearm are: (1) the defendant possessed a firearm, (2) the defendant was previously convicted of a felony, and (3) less than five years elapsed since the defendant's discharge from probation. See *People v Perkins*, 473 Mich 626, 631 n 5; 703 NW2d 448 (2005). The elements of felony-firearm are: (1) the defendant possessed a firearm, (2) during the commission of, or attempt to commit, a felony. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). To prove the offense of carrying a concealed weapon, the prosecution must show that the defendant knowingly possessed a concealed weapon without a license. *People v Hernandez-Garcia*, 477 Mich 1039, 1040 n 1; 728 NW2d 406 (2007).<sup>1</sup>

Each of these crimes requires the element of possession of a weapon. Defendant claims that there was insufficient evidence for a rational trier of fact to have found that he had possession of a gun. We hold that there was ample evidence on the record to support defendant's convictions. The testimony of the three police officers established that defendant possessed a gun. Specifically, there was evidence that the men in the restaurant, including defendant, looked at the police car as it pulled into the parking lot. One of the officers observed defendant walk to the garbage can and put his arm up to his elbow inside. Subsequently, the officers received information from one of the suspects at the restaurant, which prompted a search of the garbage can. A loaded gun was found on top of the trash inside the can. While it is true that the officers never observed defendant carrying the gun, their testimony was sufficient for a jury to infer that the gun in the garbage can belonged to defendant and that defendant placed it there after spotting the police officers. Furthermore, the parties stipulated that on the date in question defendant was ineligible to possess a firearm because he had been previously convicted of a felony. Therefore, the evidence was sufficient to support defendant's convictions of carrying a concealed weapon and felon in possession of a firearm, the latter of which is a valid underlying felony for felony-firearm, and accordingly, sufficient evidence was presented to convict defendant of felony-firearm. MCL 750.224f; MCL 750.227b; see also *People v Sturgis*, 427 Mich 392, 405-406; 397 NW2d 783 (1986).

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<sup>1</sup> Although this ruling was rendered in an order, not an opinion, an order of the Supreme Court is binding precedent when the rationale can be understood. *People v Edgett*, 220 Mich App 686, 693 n 6; 560 NW2d 360 (1996).

Moreover, there was no error, as defendant contends, in allowing testimony that certain police actions were prompted by a statement one of the suspects gave to police after his arrest. “The Confrontation Clause prohibits the admission of all out-of-court testimonial statements unless the declarant was unavailable at trial and the defendant had a prior opportunity for cross-examination.” *People v Chambers*, 277 Mich App 1, 10; 742 NW2d 610 (2007), citing *Crawford v Washington*, 541 US 36, 68; 124 S Ct 1354; 158 L Ed 2d 177 (2004). “However, the Confrontation Clause does not bar the use of out-of-court testimonial statements for purposes other than establishing the truth of the matter asserted.” *Chambers*, 277 Mich App at 10-11; see also *Crawford*, 541 US at 59. “Specifically, a statement offered to show why police officers acted as they did is not hearsay.” *Chambers*, 277 Mich App at 11.

The statement at issue was never admitted into evidence. Additionally, the officers never divulged the substance of the statement during their testimony. Instead, they testified regarding their reactions to some information provided. Such evidence was admissible because it was relevant and did not constitute hearsay. *Chambers*, 277 Mich App at 11.

Lastly, defendant contends that the trial court abused its discretion by increasing defendant’s minimum sentences premised on facts not proven to a jury beyond a reasonable doubt. Defendant recognizes that the trial court acted in accordance with the decision in *People v Drohan*, 475 Mich 140; 715 NW2d 778 (2006), but contends that *Drohan* was wrongly decided. Our role as an intermediate appellate court is limited, and we cannot disregard clear Supreme Court precedent. *Tait v Ross*, 37 Mich App 205, 207; 194 NW2d 554 (1971). Accordingly, defendant must direct his argument to our Supreme Court.

Affirmed.

/s/ Michael J. Kelly  
/s/ Kurtis T. Wilder  
/s/ Karen M. Fort Hood