

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JUMEKE WALTER JONES,

Defendant-Appellant.

UNPUBLISHED

February 26, 2008

No. 271414

Wayne Circuit Court

LC No. 06-000835-01

Before: White, P.J., and Hoekstra and Schuette, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of carrying a weapon in a motor vehicle, MCL 750.227, operating a motor vehicle while license suspended, MCL 257.904(1), and possession of marijuana, MCL 333.7403(2)(d). Defendant was found not guilty of carrying a dangerous weapon with unlawful intent, MCL 750.226, being a felon in possession of a firearm, MCL 750.224f, and the associated count of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. On the carrying a weapon conviction, defendant was sentenced as a fourth habitual offender, MCL 769.12, to a prison term of 1 to 5 years, with 17 days jail credit.¹ Defendant was further sentenced to a jail term of 17 days for the operating while license suspended and marijuana possession convictions. Defendant appeals as of right, challenging the sufficiency of the evidence to support his conviction of carrying a weapon in a motor vehicle and the propriety of that conviction in light of his acquittal of the felon in possession and felony firearm charges. Because we conclude that the evidence was sufficient to support defendant's conviction of carrying a weapon in a motor vehicle, and that any error in the verdicts rendered by the trial court may not be corrected on appeal and thus inures to the benefit of defendant, we affirm.

Defendant first argues that the evidence was insufficient to support his conviction of carrying a weapon in a motor vehicle in violation of MCL 750.227. We disagree. This Court

¹ At the sentencing hearing, the trial court stated that it would not sentence defendant as a habitual fourth offender. However, after an intake specialist requested written clarification from the court, it amended the judgment of sentence to include habitual fourth offender status. Defendant's term of imprisonment, however, did not change with the inclusion of the habitual offender status. Defendant has not challenged the propriety of this action on appeal.

reviews de novo a challenge to the sufficiency of the evidence in a bench trial, examining the evidence in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proved beyond a reasonable doubt. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). Circumstantial evidence and reasonable inferences that arise from the evidence can constitute sufficient proof of the elements of the crime beyond a reasonable doubt. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

To establish the offense of carrying a weapon in a vehicle, the prosecution must show: (1) the presence of a weapon in a vehicle operated or occupied by the defendant, (2) that the defendant knew or was aware of the presence of the weapon, and (3) that the defendant was carrying the weapon. *People v Nimeth*, 236 Mich App 616, 622; 601 NW2d 393 (1999). The element of “carrying” is essential for a conviction of carrying a concealed weapon in a vehicle and may not be inferred solely from evidence that the defendant knew the weapon was present in the vehicle. *People v Emery*, 150 Mich App 657, 667; 389 NW2d 472 (1986). Rather, the evidence must also show that the weapon was readily accessible to the defendant. *Nimeth, supra* at 621-622. Here, defendant argues that the evidence at trial did not support that he possessed the requisite knowledge of and access to the weapon. We do not agree.

When viewed in a light most favorable to the prosecution, the evidence shows that the weapon at issue was found in a van being driven by defendant and from which he quickly alighted after the vehicle was stopped by the police. The evidence further shows that the weapon, a firearm, was plainly visible to a police officer immediately upon his entering the van, and was in close proximity to defendant because it was in the central aisle of the van. It could be reasonably inferred from this evidence that defendant had knowledge of and ready access to the weapon. *Nimeth, supra*. Consequently, the evidence was sufficient to support that he carried a weapon in violation of MCL 750.227. *Carines, supra*; see also *People v Butler*, 413 Mich 377, 390 n 11; 319 NW2d 540 (1982).

Defendant’s next argument stems from his acquittal of being a felon in possession of a firearm and the related felony-firearm charge.² The trial court indicated in its decision that defendant could not be found guilty of these offenses because it could not find that defendant “possessed” the firearm. Defendant maintains that, absent possession, he cannot be convicted of carrying a weapon in a vehicle and that the trial court’s verdicts in this matter are thus improperly inconsistent. See *People v Ellis*, 468 Mich 25, 26; 658 NW2d 142 (2003) (a judge sitting as a trier of fact is not permitted to render an inconsistent verdict). However, even accepting that the verdicts are improperly inconsistent the remedy is not, as suggested by

² Although defendant asserts that the court rendered inconsistent verdicts in finding him guilty of carrying a weapon in a motor vehicle but not guilty of the three other weapons charges, the focus of his argument is on an alleged inconsistency in finding that he “could carry the gun without possessing it.” The crime of carrying a firearm with unlawful intent does not speak in terms of possession. MCL 750.226 (“[a]ny person who, with intent to use the same unlawfully against the person of another, goes armed with a pistol or other firearm . . .”). Further, in finding defendant not guilty of this offense, the court focused on the intent element of the crime. So, this offense is not implicated by defendant’s argument.

defendant, to reverse his conviction of carrying a concealed weapon in a motor vehicle. Rather, where the trial court's findings support the conviction, the inconsistency inures to the defendant's benefit. However, "a trial court's decision of not guilty, whether proper or not, is protected by double jeopardy principles." *Id.* at 28. Defendant has thus benefited from any inconsistency in the trial court's verdicts by avoiding felony-firearm and felon in possession convictions, as any such error "cannot be corrected on appeal." *Id.*

Affirmed.

/s/ Helene N. White

/s/ Joel P. Hoekstra

/s/ Bill Schuette