

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEVIN LAVAUGHN HAMILTON,

Defendant-Appellant.

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UNPUBLISHED

May 12, 2005

No. 249801

Wayne Circuit Court

LC No. 02-012645-01

Before: O’Connell, P.J., and Markey and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of carrying a concealed weapon (CCW) in a motor vehicle, MCL 750.227(2), being a felon in possession of a firearm (felon in possession), MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b(1). This case arose when a computer inquiry made during a routine traffic stop revealed that defendant had an outstanding warrant. During an inventory search of defendant’s vehicle, the arresting officers discovered a firearm in the pocket of a leather coat that was in the trunk. We affirm.

Police detained defendant in the parking lot of a gas station after observing that his license plate registration had expired. Police explained to defendant why he was stopped, asked for his identification, and then told defendant to wait in his vehicle. After running a routine search of defendant’s information in the computer system, police learned that defendant had an outstanding local warrant. Defendant was placed under arrest, and an inventory search revealed a leather coat, which had a letter addressed to defendant in the left front pocket and a “Gloch” handgun in the right front pocket. Defendant admitted that the coat was his. At trial, defendant’s friend claimed ownership of the gun.

Defendant first argues that the trial court violated his due process rights by conducting overly extensive and hostile questioning of defense witnesses. We disagree. A court may examine witnesses and control the manner of examination of the witnesses, MRE 614(b), MRE 611, but “the trial court must exercise caution and restraint to ensure that its questions are not intimidating, argumentative, prejudicial, unfair, or partial.” *People v Cheeks*, 216 Mich App 470, 480; 549 NW2d 584 (1996). “The test is whether the judge’s questions and comments may have unjustifiably aroused suspicion in the mind of the jury concerning a witness’ credibility and whether partiality quite possibly could have influenced the jury to the detriment of the defendant’s case.” *Id.* The primary concern of a limitation on a judge’s questioning is the effect

of the questioning on a jury. *People v Wilder*, 383 Mich 122, 125; 174 NW2d 562 (1970). Specifically, the concern is that the jury may be improperly influenced against the defendant by the nature and manner of the court's questioning. In this case, the judge asked the questions in the course of a bench trial, and where there is no jury and no specifically prejudicial questioning, there is no error. *Id.* at 124-125. The court's questioning in this case, although extensive, was meant to develop a complete record and otherwise clarify relevant testimony. *People v Gendron*, 144 Mich App 509, 515; 376 NW2d 143 (1985). Therefore, the trial court's questioning of witnesses did not deny defendant a fair trial. *Id.*

Next, defendant cursorily argues ineffective assistance of counsel. After reviewing the record, we conclude that defendant was not deprived of his right to effective assistance of counsel. Defendant's claimed errors were unsubstantiated and generally consisted of matters of trial strategy that we will not second-guess on appeal. *People v Rice (On Remand)*, 235 Mich App 429, 445; 597 NW2d 843 (1999). That defense counsel's trial strategy was ultimately unsuccessful does not necessarily mean counsel provided ineffective assistance. *People v Kevorkian*, 248 Mich App 373, 414-415; 639 NW2d 291 (2001).

Defendant also argues that the trial court abused its discretion in denying defendant his motion for a new trial or an evidentiary hearing. But given that there was no impropriety in the court's questioning and that defense counsel was not ineffective, it follows that the trial court did not abuse its discretion in denying defendant's motion for a new trial. See *People v Leonard*, 224 Mich App 569, 580; 569 NW2d 663 (1997).<sup>1</sup>

Finally, defendant argues that his prosecution for three separate felonies arising out of a single instance of possession of a firearm was barred by double jeopardy. We disagree. A double jeopardy challenge presents a question of law that we review de novo. *People v Herron*, 464 Mich 593, 599; 628 NW2d 528 (2001).

Double jeopardy is a fundamental protection of both the United States and Michigan Constitutions and prohibits placing a defendant twice in jeopardy for a single offense. US Const, Am V; Const 1963, art 1, § 15; *Herron, supra*. According to the felony complaint, the felon in possession charge was predicated on defendant's prior conviction for CCW, MCL 750.227, and the felony-firearm charge was predicated on the felon in possession charge. The double jeopardy protection against multiple punishment for the same offense is a restriction on a court's ability to impose a more severe punishment than the Legislature intended, not a limit on the Legislature's

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<sup>1</sup> In the text of his brief, defendant also argues that his admission to ownership of the leather coat should have been suppressed because defendant was in custody but had not been given his warnings pursuant to *Miranda v Arizona*, 384 US 436, 444-445; 86 S Ct 1602; 16 L Ed 2d 694 (1966), when he was questioned. Defendant also argues that there was insufficient evidence produced at trial to convict him of being a felon in possession of a firearm because the evidence actually supported a finding that Freeman left the firearm in defendant's vehicle. These issues have not been properly presented to us, however, because defendant failed to identify them as issues in his questions presented. Therefore, they are waived. MCR 7.212(C)(5); *People v Brown*, 239 Mich App 735, 748; 610 NW2d 234 (2000); *Hammack v Lutheran Social Services*, 211 Mich App 1, 7; 535 NW2d 215 (1995).

power to define crime and affix punishment. *People v Sturgis*, 427 Mich 392, 400; 397 NW2d 783 (1986).

Having already discerned the Legislature's intent on this issue, our Supreme Court has stated that "felony-firearm and concealed weapon offenses are distinct offenses which may be separately punished in a single trial when the concealed weapon offense is not the predicate of the felony-firearm offense." *Id.* at 410. Therefore, defendant's punishment for both felony-firearm and CCW was constitutionally permissible in this case because the felony-firearm charge was not based on the concealed weapon offense. Further, the Legislature intended to permit a defendant charged with felon in possession to be charged with an additional felony-firearm count because the felon in possession charge does not constitute one of the explicitly enumerated exceptions to the felony-firearm statute. *People v Calloway*, 469 Mich 448, 452; 671 NW2d 733 (2003). Therefore, defendant's convictions of felon in possession, CCW, and felony-firearm did not violate the constitution's protection against imposing multiple punishments for a single offense.

Affirmed.

/s/ Peter D. O'Connell

/s/ Jane E. Markey

/s/ Michael J. Talbot