

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENYANA DEWAUNN KING,

Defendant-Appellant.

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UNPUBLISHED

August 11, 2005

No. 253615

Oakland Circuit Court

LC No. 2002-184498-FH

Before: Whitbeck, C.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Defendant Kenya King appeals as of right his jury conviction of felon in possession of a firearm.<sup>1</sup> We affirm. We decide this case without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

King was charged with fourth-degree fleeing and eluding,<sup>2</sup> carrying a concealed weapon,<sup>3</sup> possession of a firearm during the commission of a felony,<sup>4</sup> and being a felon in possession of a firearm after the police stopped the borrowed vehicle King was driving and discovered a handgun on the driver's side floorboard. Ammunition recovered from the vehicle's glove compartment matched a bullet found in King's pocket. King maintained that the handgun likely belonged to his passenger. He stated that he found the bullet in the vehicle's ashtray, and placed it in his pocket so that his children would not see it. King's passenger denied ownership of the handgun. The vehicle's owner stated that she placed the handgun in the vehicle, and forgot to tell King it was there when she loaned him the vehicle.

The jury convicted King of being a felon in possession of a firearm, but acquitted him of fleeing and eluding, carrying a concealed weapon, and felony-firearm. King moved for a directed verdict of acquittal or, in the alternative, a new trial, noting that after the trial, the jurors

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<sup>1</sup> MCL 750.224f.

<sup>2</sup> MCL 750.479a(2).

<sup>3</sup> MCL 750.227.

<sup>4</sup> MCL 750.227b.

stated that they acquitted him of carrying a concealed weapon and felony-firearm on the ground that the prosecution did not establish that he knowingly possessed the weapon. King asserted that the trial court erred by failing to instruct the jury on possession as an element of the charge of felon in possession of a firearm. The trial court denied the motion.

## II. Jury Instructions

### A. Standard Of Review

We review de novo claims of instructional error.<sup>5</sup>

### B. Instruction On Possession

The trial court denied defense counsel's request to instruct on possession as an element of the charge of carrying a concealed weapon, and defense counsel made no request for the same instruction as it related to the charge of felon in possession of a firearm. King argues on appeal that the trial court erred in failing to give this instruction. However, defense counsel expressed satisfaction with the instructions as read to the jury. A party who forfeits a right might still obtain appellate review for plain error, but a party who waives a known right cannot seek appellate review of a claimed deprivation of that right.<sup>6</sup> Specifically, a party waives review of the propriety of jury instructions when he approves the instructions at trial.<sup>7</sup> By expressly approving the instructions, King waived this issue on appeal.<sup>8</sup>

## III. Ineffective Assistance Of Counsel

### A. Standard Of Review

Whether a defendant was denied effective assistance of counsel presents a mixed question of fact and constitutional law.<sup>9</sup> This determination requires a judge first to find the facts, then determine "whether those facts constitute a violation of the defendant's constitutional right to effective assistance of counsel."<sup>10</sup> We review the trial court's factual findings for clear error and review de novo its constitutional determination.<sup>11</sup>

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<sup>5</sup> *People v Marion*, 250 Mich App 446, 448; 647 NW2d 521 (2002).

<sup>6</sup> *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000); *People v Matuszak*, 263 Mich App 42, 57; 687 NW2d 342 (2004).

<sup>7</sup> *People v Lueth*, 253 Mich App 670, 688; 660 NW2d 322 (2002).

<sup>8</sup> *Carter, supra*; *Matuszak, supra*; *Lueth, supra*.

<sup>9</sup> *People v LeBlanc*, 465 Mich 575, 578; 640 NW2d 246 (2002).

<sup>10</sup> *Id.* at 579.

<sup>11</sup> *Id.*

## B. Failure To Request Instruction On Possession

King claims that counsel rendered ineffective assistance by failing to request an instruction on possession as an element of felon in possession of a firearm. To establish ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms. Counsel must have made errors so serious that he was not performing as the "counsel" guaranteed by the federal and state constitutions.<sup>12</sup> Counsel's deficient performance must have resulted in prejudice. To demonstrate the existence of prejudice, a defendant must show a reasonable probability that but for counsel's error, the result of the proceedings would have been different.<sup>13</sup>

Here, King points to no authority that requires a trial court to instruct on or explain possession as an element of the charge of felon in possession of a firearm. Trial counsel was not required to make a meritless request.<sup>14</sup> Therefore, King has not overcome the presumption that counsel rendered effective assistance.<sup>15</sup> Moreover, we note that even if the trial court had instructed the jury on possession, the jury could have reached the same verdict. A jury may render inconsistent verdicts as to multiple charges that share an identical element.<sup>16</sup>

Affirmed.

/s/ William C. Whitbeck  
/s/ David H. Sawyer  
/s/ E. Thomas Fitzgerald

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<sup>12</sup> US Const, Am VI; Const 1963, art 1, § 20; *People v Carbin*, 463 Mich 590, 599; 623 NW2d 884 (2001).

<sup>13</sup> *Id.* at 600.

<sup>14</sup> *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000).

<sup>15</sup> *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999).

<sup>16</sup> *People v Goss (After Remand)*, 446 Mich 587, 597; 521 NW2d 312 (1994).