

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
July 21, 2015

v

SENORIA DOMINIQUE LUMPKINS,

Defendant-Appellant.

No. 321844
Kent Circuit Court
LC No. 13-003375-FH

Before: SERVITTO, P.J., and BECKERING and BOONSTRA, JJ.

PER CURIAM.

Following a jury trial, defendant, Senoria Dominique Lumpkins, was convicted of carrying a concealed weapon (CCW), MCL 750.227. The trial court sentenced her to 36 months' probation. Defendant appeals as of right, and we affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

The facts of this case are undisputed. At approximately 3:30 a.m. on February 22, 2013, Eric Staman, a city of Wyoming police officer, and his partner responded to a disorderly person complaint at an apartment complex. It was reported that an intoxicated female was causing a disturbance in one of the buildings. The apartment building had 12 units: three floors and four apartments on each floor. As Staman approached the building, he could hear defendant from the parking lot and see her through the window in the second-floor hallway. The building entry had a security door, which required someone to "buzz" the door for Staman and his partner to get inside.

Once inside, the officers found defendant in a shared hallway between apartment units. Defendant, who was intoxicated, was upset and engaged in a boisterous verbal spat with her sister, with whom she shared an apartment. After speaking with the officers about her behavior, defendant went back into her apartment in order to obtain some personal effects and arrange for someone to pick her up from the apartment. Only a few feet inside the apartment, defendant got into an even louder argument with her sister. Because defendant continued to act in a disorderly fashion, the officers decided to arrest her.

When Staman arrested defendant, he noticed what appeared to be a cellular telephone charger protruding from the front of her shirt. Rather than reach down defendant's shirt and remove the item while in the apartment parking lot, he decided to briefly search her and ask for

her charger after transporting her to jail. After removing defendant's handcuffs at the jail, Staman asked defendant for the charger. Defendant removed the charger and told Staman "You might want this as well." Defendant then reached down her shirt, pulled out a small, unloaded handgun, and set it on the table. Staman secured the gun, read defendant her *Miranda*¹ rights, and she agreed to speak with him. Defendant told Staman that an acquaintance had given her the gun about a day before because the acquaintance did not want to be caught with it. Defendant agreed to hold onto it for the acquaintance, but she forgot that she had hidden it in her bra that night.

At her preliminary examination, defendant opposed the bindover. She did not dispute that she possessed a concealed handgun or that she did not have a license to carry a concealed pistol, but she argued that MCL 750.227 contained an exception that applied to her possession of the concealed handgun in the hallway. The district court found that the exception did not apply and bound defendant over for trial. Defendant thereafter moved the circuit court to quash the information and for dismissal of the charges, but the circuit court denied the motion, holding that the exceptions in MCL 750.227 did not extend to the common area of an apartment building such as the hallway at issue in this case.

II. MCL 750.227

On appeal, defendant does not dispute that she possessed a concealed handgun while she was in the hallway, nor does she dispute that she possessed the handgun without a concealed pistol license. Instead, she argues that the hallway outside her apartment building was part of her "dwelling house" or "other land possessed by" her under the exceptions set forth in MCL 750.227, meaning that her possession of the handgun was legal. "When reviewing a district court's bindover decision, we review the court's determination regarding the sufficiency of the evidence for an abuse of discretion, but we review the court's rulings concerning questions of law de novo." *People v Flick*, 487 Mich 1, 9; 790 NW2d 295 (2010). The determination of "whether conduct falls within the scope of a penal statute is a question of statutory interpretation" that we review de novo. *Id.* at 8-9.

Defendant's CCW conviction arose from her possession of a concealed pistol as prohibited by MCL 750.227(2). The CCW statute expressly exempts a defendant's possession of a concealed weapon in his or her "dwelling house, place of business or on other land possessed by the person" from the scope of prohibited conduct, providing in pertinent part:

(1) A person shall not carry a dagger, dirk, stiletto, a double-edged nonfolding stabbing instrument of any length, or any other dangerous weapon, except a hunting knife adapted and carried as such, concealed on or about his or her person, or whether concealed or otherwise in any vehicle operated or occupied by the person, *except in his or her dwelling house, place of business or on other land possessed by the person.*

¹ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

(2) A person shall not carry a pistol concealed on or about his or her person, or, whether concealed or otherwise, in a vehicle operated or occupied by the person, *except in his or her dwelling house, place of business, or on other land possessed by the person*, without a license to carry the pistol as provided by law and if licensed, shall not carry the pistol in a place or manner inconsistent with any restrictions upon such license. [MCL 750.227 (emphasis added).]

In construing the exceptions contained in MCL 750.227, this Court explained in *People v Clark*, 21 Mich App 712, 716; 176 NW2d 427 (1970), that the purpose of the exceptions is to “allow persons to defend those areas in which they have a possessory interest. This is the clear import of the phrase ‘possessed by him’ which modifies the three areas set forth in the statute.” See also *People v Alexander*, 82 Mich App 486, 488; 266 NW2d 489 (1978). In *People v Marrow*, 210 Mich App 455, 463-464; 534 NW2d 153 (1995), overruled in part on other grounds by *People v Pasha*, 466 Mich 378; 645 NW2d 275 (2002),² this Court quoted *Clark*, 21 Mich App at 716, and stated in part, “Exceptions to [MCL 750.227] were intended ‘to allow persons to defend those areas in which they have a possessory interest.’ ” In short, the statutory text makes clear that the Legislature only intended to exempt those areas in which a defendant had a sufficient possessory interest. *Marrow*, 210 Mich App at 463; *Clark*, 21 Mich App at 716.

Defendant cannot show a possessory interest in the common hallway in her apartment building. Defendant lived in an apartment building that had 3 floors and 12 total units. Thus, a number of different tenants and visitors to the building shared the hallway where defendant possessed the gun. Hallways in an apartment building have long been understood to be areas of common use. See, e.g., *Williams v Cunningham*, 429 Mich 495, 499; 418 NW2d 381 (1988). *Allison v AEW Cap Mgt, LLP*, 481 Mich 419, 427; 751 NW2d 8 (2008). In *Allison*, 481 Mich at 427, quoting *Black’s Law Dictionary* (6th ed), our Supreme Court explained that “common areas” in the context of landlord-tenant law are “the portion of [the] premises used in common by tenants over which landlord retains control (e.g. hallways, stairs) and hence for whose condition he is liable, as contrasted with areas of which tenant has exclusive possession.” The landlord retains possession over common areas, and grants tenants only a license to *use* the common areas. *Stanley v Town Square Co-op*, 203 Mich App 143, 147; 512 NW2d 51 (1993). As explained in *Stanley*:

² In *Marrow*, 210 Mich App at 457-458, the defendant argued that the jury should have been instructed, consistent with the dwelling-house exception. In that case, the defendant was arrested while standing outside a home in an area of the driveway between the public sidewalk and the public street. *Id.* at 457. This Court cited two reasons for holding that the defendant was not entitled to the instruction on the dwelling-house exception: (1) the defendant was a convicted felon so he could not lawfully possess a pistol; and (2) the defendant did not have a possessory interest in the property on which he was arrested. *Id.* at 460-461. In *Pasha*, 466 Mich at 381, 381 n 7, our Supreme Court overruled *Marrow* to the extent it required lawful ownership of the pistol as a prerequisite to claiming an exception contained in MCL 750.227(2), but cited with approval the idea that the defendant was required to have a possessory interest in the land in order to claim the dwelling-house exception.

The landlord grants to tenants rights of exclusive possession to designated portions of the property, but the landlord retains exclusive possession of the common areas. The landlord grants to tenants a license to use the common areas of the property. Tenants pay for this license as part of their rent. Therefore, tenants are invitees of the landlord while in the common areas, because the landlord has received a pecuniary benefit for licensing their presence. [*Id.*]

In light of established landlord-tenant law, defendant had no possessory interest in the hallway, meaning that she cannot come within the ambit of the exceptions to MCL 750.227(2). See *Marrow*, 210 Mich App at 463 (“Defendant had no need to defend that which all are free to use.”); *Clark*, 21 Mich App at 716. The trial court did not err in denying defendant’s motion to quash the bindover and dismiss the CCW charge.

Affirmed.

/s/ Deborah A. Servitto
/s/ Jane M. Beckering
/s/ Mark T. Boonstra