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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MALCOLM COLBERT,

Defendant-Appellant.

UNPUBLISHED
January 12, 2026
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No. 370296
Wayne Circuit Court
LC No. 22-006051-01-FC

Before: BOONSTRA, P.J., and O'BRIEN and YOUNG, JJ.

PER CURIAM.

Defendant appeals by right his jury-trial convictions of receiving and concealing stolen property (RCSP), MCL 750.535(4)(a) (value of more than $200 but less than $1,000); felon in possession of a firearm (felon-in-possession), MCL 750.224f; and carrying a firearm during the commission of a felony (felony-firearm), second offense, MCL 750.227b(1).[1] The trial court sentenced defendant as a fourth-offense habitual offender, MCL 769.12, to a prison term of 46 to 60 months for his felon-in-possession conviction, to be served concurrently with a term of one year in jail for his RCSP conviction. The trial court also sentenced defendant to a prison term of five years for his felony-firearm conviction, to be served consecutively to his other sentences, "and any parole if applicable." We affirm defendant's convictions and sentences, but remand to the trial court for the ministerial task of correcting defendant's judgment of sentence.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

On August 3, 2022 Eliran Zohrar was the victim of a carjacking, armed robbery, and nonfatal shooting in Detroit. Zohrar, a locksmith, received a call that evening from a woman,

[1] The jury acquitted defendant of carjacking, MCL 750.529a; assault with intent to do great bodily harm less than murder, MCL 750.84; armed robbery, MCL 750.529; and three counts of felony-firearm.

Alexis Ruckes,[2] seeking assistance because she had lost the key to her car, a silver Dodge Charger. Zohrar accepted the job and drove to meet her, arriving at about 9:30 p.m. Zohrar parked his vehicle, leaving his wallet (containing two to three thousand dollars in cash from other locksmithing jobs) inside. Zohrar accompanied Ruckes to the driveway where the Charger was parked, at which point a man wearing a ski mask confronted him, pointed a gun at him, and threatened to kill him. Zohrar agreed to give the man the money in his wallet, but he was shot in the back when he turned to go back to his vehicle. Zohrar attempted to run, hearing several more gunshots, but soon had to stop running because of his gunshot wound. The man then shot Zohrar a second time. Zohrar gave the man his keys and phone. The man drove off in Zohrar's vehicle, and Ruckes followed shortly thereafter in the Charger. Zohrar received help from a bystander who lived in the area and who had heard the gunshots and dialed 911.

Detroit police officers checked the surveillance footage of a nearby camera and observed a silver Charger leaving the scene. After running the Charger's license plate through the Law Enforcement Information Network (LEIN), they discovered that the Charger was registered to defendant's mother, Edna Houston, with defendant identified as a secondary owner. Police issued a be-on-the-lookout (BOLO) for the Charger, and obtained a search warrant for Houston's house on Riverpark in Redford, Michigan (the Riverpark house).

The next day, David Jakeway, a civilian working with the Detroit Police Department's Commercial Automobile Theft Section (CATS), located the Charger parked in front of the Riverpark house. Jakeway initially observed that the driver's seat was empty and that Ruckes was sitting in the passenger seat. Shortly thereafter, defendant exited the Riverpark house, entered the driver's seat of the Charger, and drove away. Detroit Police Officers Carson Hopman and Austin Morris performed a felony traffic stop, arresting defendant and Ruckes. Officer Hopman observed Officer Morris recover a forty-caliber "black Glock 23" from the front passenger seat of the Charger, along with a standard magazine and a "large magazine, drum magazine."

After the arrest, members of CATS, including Detroit Police Sergeant Robert Wellman and Detroit Police Detective Quentin Glover, assisted by Jakeway, executed the Riverpark house search warrant. Sergeant Wellman spoke with defendant's father, who indicated that defendant primarily stayed in the basement. Officers searched "a walled off room in the basement," which contained "like a bed platform" (minus a mattress or sheets), and "kind of like an armoire that had stuff that could hang up as well as drawers." Sergeant Wellman searched the armoire, locating a letter addressed to defendant from the Secretary of State dated April 7, 2022. When Detective Glover lifted a board sitting atop the bed platform, he located two magazines and a box containing "a brown and black Draco [a brand of firearm]." The box reflected "the brand or the manufacturer of that gun." Inside a drawer, Jakeway also located a "Smith & Wesson handgun" (the SW handgun), whose serial number was defaced. Jakeway photographed the SW handgun, along with

[2] Ruckes was a codefendant in these proceedings and agreed to testify against defendant in exchange for reduced charges. After pleading *nolo contendere* to accessory after the fact to a felony, MCL 750.505b, Ruckes was sentenced on October 2, 2023, to a prison term of two years.

a shelf containing ammunition, "three extended magazines for a handgun," and an identification wristband with defendant's name on it.

At trial, in response to questioning regarding whether anything else was recovered from the basement bedroom, Detective Glover stated: "Yes, I recovered two I believe prison photos of the Defendant." Defense counsel objected and moved for a mistrial, arguing that the statement was prejudicial and improperly attacked defendant's character. The trial court denied the motion, noting that the jury knew and would be reminded that defendant had previously been convicted of a specified felony, and finding that any prejudice would be mitigated by a curative instruction. When the jury returned, the trial court stated: "I am instructing you to disregard the last testimony of this witness."

Houston testified that she had never seen any guns or ammunition in the Riverpark house, nor had she ever seen defendant or Ruckes with a gun. Houston confirmed that defendant stayed in the basement, but added that he was not there every day and that, when he was, he slept on the sofa outside of the basement bedroom. According to Houston, defendant and Ruckes came to the Riverpark house on August 3, 2022 and went to the basement. Between "approximately" 7:30 p.m. and 8:30 p.m., defendant came upstairs to shower and Ruckes told Houston that "she'd be right back." Ruckes then left, alone, in the Charger. Houston estimated that she went to bed at "approximately 10 or 11" p.m., at which point Ruckes had not returned. According to Houston, defendant was still at the Riverpark house when she went to bed, and in response to whether he could have left without Houston knowing, she stated: "Anything's possible, but I can't say that he left the house. I never saw him left [sic] the house. I normally hear the door when it opens." Houston testified that defendant was home on August 4, 2022, and that she believed he was in the basement at some point. Houston stated that Ruckes did not enter the Riverpark house on August 4, but at one point was sitting outside in the Charger.

Ruckes testified that she and defendant had left the Riverpark house at about 5:00 a.m. on August 4, 2022, for their shared 6:00 a.m. work shift. Ruckes explained that she carried a weapon every day for safety, and that she had a concealed pistol license (CPL). Ruckes stated that she had purchased the Glock about "two weeks" before her arrest, because her other handgun had been stolen, and that she was carrying the Glock on the night of the shooting.[3] According to Ruckes, defendant had previously seen her carrying the Glock. When police stopped the Charger, Ruckes had "the drum to the gun," which had just arrived in the mail that day, and the Glock was in a holster on her hip. As police approached, she detached the clip and placed it on the floor, on the front passenger side of the Charger. Ruckes stated that she informed police about the Glock and advised them of her CPL, but that they never asked to see it.

According to Ruckes, she had purchased the Draco on the day of her arrest and had placed it in the basement of the Riverpark house. Ruckes stated that she set the Draco on "a wooden

[3] Ruckes' version of the facts surrounding the shooting incident differed markedly from Zohrar's including that defendant was not the man who had shot Zohrar.

platform,"[4] and that it was on top of that platform when she and defendant left. The prosecutor showed Ruckes a photograph of the Draco, which Ruckes identified as hers. When shown a photograph of the SW handgun, Ruckes asserted that it was "similar" to her Smith & Wesson, but that the SW handgun in the picture had an extra compartment on the bottom, which her Smith & Wesson did not have. According to Ruckes, she had not seen her Smith & Wesson since it was stolen, explaining that she had filed a police report and that all of her weapons were registered.

The prosecution reminded Ruckes that when she pleaded no contest to accessory after the fact, facts were read into the record establishing that she was in the Charger with defendant, that defendant knew the gun was there, and that she knew he wasn't supposed to have a gun. Ruckes agreed, but stated: "[H]e didn't possess a gun. I did." Ruckes asserted that she was told that "the only thing" she "would have to truthfully testify to was [defendant] being a felon," and her "still having him around my firearm and nothing more."

At the close of proofs, the parties stipulated that as of August 3, 2022, defendant was ineligible to use or possess a firearm, having been previously convicted of a specified felony. The jury convicted defendant of RCSP, felon-in-possession, and one count of felony-firearm, and acquitted him of carjacking, armed robbery, assault with intent to commit great bodily harm, and three counts of felony-firearm. This appeal followed.

II. SUFFICIENCY OF THE EVIDENCE

On appeal, defendant first argues that there was insufficient evidence presented to support his convictions of felon-in-possession and felony-firearm. We disagree.

"This Court reviews de novo [a] defendant's challenge to the sufficiency of the evidence." *People v Meissner*, 294 Mich App 438, 452; 812 NW2d 37 (2011). On appeal, this Court views "the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime to have been proved beyond a reasonable doubt." *Id*. "The standard of review is deferential; a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Bailey*, 310 Mich App 703, 713; 873 NW2d 855 (2015) (quotation marks and citation omitted).

"The sufficient evidence requirement is a part of every criminal defendant's due process rights." *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748 (1992), mod 441 Mich 1201 (1992). "[D]ue process requires the prosecution to prove every element beyond a reasonable doubt." *People v Oros*, 502 Mich 229, 240 n 3; 917 NW2d 559 (2018). We resolve all conflicts in the evidence in favor of the prosecution. *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008). "A jury is free to believe, or disbelieve, in whole or in part, any of the evidence presented." *People v Perry*, 460 Mich 55, 63; 594 NW2d 477 (1999).

[4] The prosecutor asked whether Ruckes was referring to "a bed with a wooden platform on top," but Ruckes stated "there was no bed down there. It was just a wooden platform. It was on the floor."

To prove felon-in-possession, the prosecution must establish (1) that defendant possessed a firearm, (2) when he was ineligible to do so under MCL 750.224f, as a result of a prior felony conviction. See *People v Perkins*, 262 Mich App 267, 269-270; 686 NW2d 237 (2004), abrogated in part on other grounds by *People v Smith-Anthony*, 494 Mich 669, 682-683; 837 NW2d 415 (2013). "The elements of felony-firearm are that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony." *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). Defendant stipulated that he was ineligible to possess a firearm because of a prior felony conviction, and on appeal he challenges only whether the prosecution presented sufficient evidence to show that he had possessed a firearm.

Possession "can be actual or constructive, joint or exclusive," and a defendant "has constructive possession if there is proximity to the article together with indicia of control." *People v Johnson*, 293 Mich App 79, 83; 808 NW2d 815 (2011) (quotation marks and citation omitted). "Put another way, a defendant has constructive possession of a firearm if the location of the weapon is known and it is reasonably accessible to the defendant." *Id*. (quotation marks and citation omitted). Possession is a question of fact for the jury and "can be proved by circumstantial evidence and reasonable inferences arising from the evidence." *People v Strickland*, 293 Mich App 393, 400; 810 NW2d 660 (2011). However, "the circumstantial proof must facilitate reasonable inferences of causation, not mere speculation." *People v Xun Wang*, 505 Mich 239, 251; 952 NW2d 334 (2020) (quotation marks and citation omitted).

Defendant argues that the evidence that he possessed a firearm was insufficient because the Glock was recovered from Ruckes (who possessed a CPL), and because the two other recovered firearms were accessible to numerous others in the home. Defendant cites to *Parker v Renico*, 450 F Supp 2d 727 (ED Mich, 2006), aff'd 506 F3d 444 (CA 6, 2007),[5] in which the United States Court of Appeals for the Sixth Circuit affirmed the district court's grant of a writ of habeas corpus, finding that the evidence presented at trial was too speculative to support the defendant's felon-in-possession and felony-firearm convictions. *Parker*, 506 F3d at 445, 452. In *Parker*, the defendant was traveling with three other men, sitting in the backseat on the driver's side of the vehicle. After the vehicle crashed while fleeing police, two firearms were located inside, one on the front passenger-side floor, and the other on the passenger-side backseat. This Court affirmed the defendant's convictions, finding that the evidence showed that the defendant first attempted to escape out the driver's side door, the other backseat passenger had a different weapon, and "a driver's side door repeatedly opened during the chase," suggesting that the defendant had attempted to use or dispose of a gun. *Id*. at 445-447. See also *People v Tillman*, unpublished opinion per curiam of the Court of Appeals, issued June 29, 2004 (Docket Nos. 245442, 245443, and 245894), p 6.

The Sixth Circuit disagreed, stating that "[p]resence near a firearm, without more, does not suffice to prove possession," and explaining that "each fact the state advances as 'indicia of control' fails to link Parker to the gun, and viewed cumulatively the evidence gains no greater traction." *Parker*, 506 F3d at 451-452. Without that "indicia of control," the "evidence may have

[5] "[F]ederal caselaw is not binding precedent and is only persuasive authority in resolving a question of state law[.]" *People v Rogers*, 338 Mich App 312, 327; 979 NW2d 747 (2021).

led the jury . . . to 'reasonably speculate' that Parker possessed a weapon," but was insufficient to support constructive possession beyond a reasonable doubt. *Id*. at 452. Defendant argues that, under *Parker*, the prosecution failed to establish that he was able to and intended to exercise control over any of the recovered firearms.

Viewed in a light most favorable to the prosecution, a rational jury could find that defendant had constructive possession of, at a minimum, the Draco found in the basement bedroom. The Draco was found in the room where defendant frequently stayed, under a board atop the bed platform. Ruckes testified that she purchased the Draco on August 4, 2022 and brought it into the house that same day, and that she placed it on top of what she termed the "wooden platform" in the basement bedroom. But Houston testified that Ruckes waited outside the Riverpark house that afternoon, but did not go inside. And while Ruckes stated that she placed the Draco on top of the "wooden platform" in the basement bedroom, the Draco was recovered underneath it. From this record, a jury could credit Houston's testimony and conclude that it was defendant who brought the Draco into the house and placed it underneath the bed frame. Or it could credit Ruckes' testimony (that she had placed the Draco on top of the "wooden platform") and conclude that defendant had moved the Draco and placed it under the board. On these facts, sufficient evidence was presented by the prosecution to enable a rational jury to conclude defendant had at least some indicia of control over the Draco. *Johnson*, 293 Mich App at 83.

The SW handgun was also found in the basement bedroom where defendant spent a majority of his time when at the Riverpark house. Defendant's wristband identification and a letter addressed to him were found nearby. Despite other people having access to the basement bedroom, testimony indicated that defendant was in the basement on the night of August 3, 2022, the following morning, and later in the afternoon before his arrest. Viewed in a light most favorable to the prosecution, this circumstantial evidence was sufficient for the jury to infer that defendant knew of the SW handgun's location and had reasonable access to it. *Id*.

To sustain defendant's felon-in-possession conviction, the prosecution only needed to present sufficient evidence that defendant possessed *a* gun, not every gun. See MCL 750.224f. Viewed in a light most favorable to the prosecution, the evidence, and reasonable inferences arising from it, were sufficient to enable the jury to find beyond a reasonable doubt that defendant was in possession of a firearm. It further follows that sufficient evidence was presented to support defendant's felony-firearm conviction.

III. ERROR IN THE FELONY INFORMATION

Defendant also argues that an error in his felony information resulted in his convictions for crimes with which he was never charged, requiring this Court to vacate his convictions. We disagree. Because defendant "neither objected to the information nor moved for its amendment before the trial court," his argument is unpreserved and reviewed for plain error affecting substantial rights, *People v Sabin*, 223 Mich App 530, 531-532; 566 NW2d 677 (1997), remanded in part on other grounds 459 Mich 924 (1998); see also MCL 767.76.

Both the United States and Michigan constitutions provide a criminal defendant with the right to notice of the charges against him. US Const, Am VI, XIV; Const 1963, art 1, § 20. "Grounded in a defendant's constitutional right of due process of law is the principle that an

accused shall not be called upon to defend himself against a charge of which he was not sufficiently apprised." *People v Higuera*, 244 Mich App 429, 442; 625 NW2d 444 (2001) (quotation marks, citation, and alterations omitted).

The felony information notifies a defendant of the charges against him. *People v Waclawski*, 286 Mich App 634, 706; 780 NW2d 321 (2009). The felony information "shall contain" the "time of the offense *as near as may be*," and "[n]o variance as to time shall be fatal unless time is of the essence of the offense." MCL 767.45(1)(b) (emphasis added). See also MCR 6.112(D) ("To the extent possible, the information should specify the time and place of the alleged offense.").

In this case, defendant argues that errors in the felony information violated his constitutional right to have every element of the offense charged in the felony information and found by a jury. Specifically, defendant's felony information states that the charged offenses occurred on August 3, 2022, and defendant asserts on appeal that because the only offenses he was convicted of occurred on August 4, 2022, this Court must reverse his convictions. However, the jury made no finding as to when defendant committed the offenses, nor was the exact time an element of any of the offenses charge. Defendant makes no argument that the date of offenses was essential, nor does he cite any authority to establish that a defect in the information exists, let alone one amounting to a constitutional violation.

Even assuming that an error in the information did exist, MCL 767.76 states, in relevant part:

> [No] conviction [shall] be set aside or reversed on account of any defect in form or substance of the indictment, unless the objection to such indictment, specifically stating the defect claimed, be made prior to the commencement of the trial or at such time thereafter as the court shall in its discretion permit.

Relatedly, MCR 6.112(G) provides for harmless-error review with regard to errors relating to the felony information, stating:

> Absent a timely objection and a showing of prejudice, a court may not dismiss an information or reverse a conviction because of an untimely filing or because of an incorrectly cited statute or a variance between the information and proof regarding time, place, the manner in which the offense was committed, or other factual detail relating to the alleged offense.

Defendant failed to object to the date in the felony information until this appeal, and even now has failed to demonstrate that he was prejudiced by any discrepancy. "MCR 6.112(G) places the burden on defendant to demonstrate prejudice and thus establish that the error was not harmless." *Waclawski*, 286 Mich App at 707. "The dispositive question in determining whether a defendant was prejudiced by a defect in the information is whether the defendant knew the acts for which he or she was being tried so that he or she could adequately put forth a defense." *Id.* at 706. Defendant's felony information clearly listed the charges of which he was eventually convicted, and considering that the bulk of his initial charges stemmed from conduct that occurred on the evening of August 3, 2022, lists the date of the offenses "as near as may be." See

MCL 767.45(1)(b). Defendant fails to explain how a minor discrepancy in the date listed on the felony information prejudiced him in preparing a defense, and he has not established he was unaware of the charges against him or that he was unable to defend against them.

Alternatively, defendant argues that his trial counsel was ineffective for failing to object to the verdict and for failing to object when defendant was sentenced for crimes he was not charged with committing. However, as discussed, defendant has failed to establish any error, and any objection by trial counsel would therefore have been futile. See *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010) ("Failing to advance a meritless argument or raise a futile objection does not constitute ineffective assistance of counsel.").

IV. DENIAL OF MOTION FOR MISTRIAL

Defendant also argues that the trial court abused its discretion when it denied his motion for a mistrial. We disagree. This Court reviews for an abuse of discretion a trial court's decision on a motion for a mistrial. *People v Haywood*, 209 Mich App 217, 228; 530 NW2d 497 (1995). "An abuse of discretion occurs when the court chooses an outcome that falls outside the range of reasonable and principled outcomes." *People v Unger*, 278 Mich App 210, 259; 749 NW2d 272 (2008). "A mistrial should be granted only for an irregularity that is prejudicial to the rights of the defendant, and impairs his ability to get a fair trial." *Haywood*, 209 Mich App at 228 (citations omitted). Generally, "an unresponsive, volunteered answer to a proper question is not grounds for the granting of a mistrial." *Id.* However, police officers have a "special obligation" to refrain from making prejudicial and irrelevant remarks during their testimony. *People v Holly*, 129 Mich App 405, 415-416; 341 NW2d 823 (1983).

In response to questioning about what was found while executing the search warrant in the basement bedroom, Detective Glover testified: "I recovered two I believe prison photos of the Defendant." Defense counsel immediately objected and, outside of the presence of the jury, argued for a mistrial. The trial court denied the motion, finding the jury was aware and would be reminded that defendant had stipulated to having been convicted of a felony, and that a curative instruction would mitigate any prejudice. "Jurors are presumed to follow instructions, and instructions are presumed to cure most errors." *People v Petri*, 279 Mich App 407, 414; 760 NW2d 882 (2008). Contrary to defendant's argument on appeal, the trial court immediately instructed the jury to disregard the testimony, and later reminded the jury not to consider stricken testimony when deliberating.

Defendant argues that Detective Glover's statement was too prejudicial to be addressed with a curative instruction because it painted him as a criminal, giving the jury a reason to convict him. Defendant asserts that the jury was unaware, until Detective Glover's statement, that his prior conviction was "serious enough that it resulted in imprisonment," and that it "effectively communicated to the jury that [defendant] was guilty of something." We disagree. Detective Glover's statement was brief and undetailed, and gave no indication as to why defendant had previously been incarcerated. Nor was it responsive to the prosecutor's permissible question regarding what else was found in the basement bedroom. Further, the danger in revealing that a defendant has been previously incarcerated is "that a jury will recognize that the defendant had previously been convicted of a crime . . . ." *People v McDonald*, 303 Mich App 424, 436; 844 NW2d 168 (2013) (discussing revealing parole status). However, when the jury is aware of a

defendant's prior felony conviction underlying a felon-in-possession charge, "the requisite prejudice . . . has not been shown." *Id.* In this case, any prejudice was mitigated because defendant stipulated to having previously been convicted of a felony. Because defendant did not suffer prejudice from the challenged testimony, the trial court did not abuse its discretion by denying defendant's motion for a mistrial. *Haywood,* 209 Mich App at 228.

V. CORRECTION OF JUDGMENT OF SENTENCE

Finally, defendant argues—and the prosecution agrees—that his judgment of sentence should be amended because his felony-firearm sentence was erroneously imposed to run consecutively to his misdemeanor RCSP sentence. We agree.

Under MCL 750.227b, the sentence for a felony-firearm conviction "shall be served consecutively with and preceding any term of imprisonment imposed for the conviction of the felony or attempt to commit the felony." MCL 750.227b(3). "From the plain language of the felony-firearm statute, it is evident that the Legislature intended that a felony-firearm sentence be consecutive only to the sentence for a specific underlying felony." *People v Clark*, 463 Mich 459, 463; 619 NW2d 538 (2000). "No language in the statute permits consecutive sentencing with convictions other than the predicate offense." *Id*. at 464.

The underlying felony for defendant's felony-firearm conviction was felon-in-possession. Defendant was also convicted of RCSP, and his judgment of sentence states that his felony-firearm sentence is consecutive to both his RCSP and felon-in-possession sentences "and any parole if applicable." Because RCSP was not the underlying felony for defendant's felony-firearm conviction (nor could it be, because it is a misdemeanor conviction), it was error for the trial court to impose the felony-firearm sentence consecutively to the RCSP sentence. We remand for the ministerial correction of this error. See MCR 6.435(A); MRC 7.216(A)(7).

We affirm defendant's convictions. We remand to the trial court for the ministerial task of correcting defendant's judgment of sentence. We do not retain jurisdiction.

/s/ Mark T. Boonstra
/s/ Colleen A. O'Brien
/s/ Adrienne N. Young