STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 14, 2002
v	No. 231249 Shiawasee Circuit Court
BRYAN PATRICK ADAMSKI, Defendant-Appellant.	LC No. 00-004777-FH

Before: Whitbeck, C.J., and O'Connell and Meter, JJ.

PER CURIAM.

A jury convicted defendant Bryan Patrick Adamski of receiving or concealing a stolen firearm,[1] larceny from a building,[2] and possession of a firearm during the commission of a felony (felony-firearm).[3] The trial court sentenced Adamski to concurrent prison terms of one to ten years for the receiving or concealing conviction and six to forty-eight months for the larceny conviction, to be served consecutive to a two-year prison term for the felony-firearm conviction. He now appeals as of right. We affirm.

I. Basic Facts

The facts of this case, presented at trial, are fairly simple. Adamski and James Veytruba worked with each other at the same place for approximately six months. On March 18, 1999, Veytruba was still in bed at his home around 8:30 a.m. when he heard a noise. Adamski then poked his head in Veytruba's bedroom to say that he had stopped by. Adamski reportedly told Veytruba not to bother getting up because he would return another time. Veytruba left his home a short time later. When he returned that evening, he noticed that nine firearms he had on display in his living room were missing.

Veytruba then went to speak with his neighbor, Jeffrey Gindlesperger, to ask him if he had done anything with the missing guns. Gindlesperger denied doing anything with the guns, but told Veytruba that he saw Adamski coming from Veytruba's house at around 12:30 p.m.

[1] MCL 750.535b(2).

[2] MCL 750.360.

[3] MCL 750.227b.

Adamski then asked him, Gindlesperger, where Veytruba was. Gindlesperger suggested that Adamski check at the diner down the road. When Adamski left, Gindlesperger did not see him with any guns. After discussing the missing guns, Veytruba and Gindlesperger contacted the police, who took Veytruba's complaint before following the two men to Adamski's house.

At Adamski's house, Shiawassee County Sheriff's Deputy Thomas Passinault knocked on the door. Adamski answered the door. He admitted that he had visited Veytruba that day and asked why the deputy was at his home. Passinault explained that someone had broken into Veytruba's home and had taken some firearms. Initially, Adamski said he did not know anything about the missing guns. Passinault asked Adamski whether he owned any guns of his own. Adamski said he did own guns, and showed the deputy a gun case containing three or four guns that did not fit the description of the stolen guns. Passinault then asked Adamski whether he had any other firearms in the house. Adamski replied that he had two shotguns under his bed. With Adamski's permission, Passinault searched Adamski's home. After finding the two shotguns under Adamski's bed, Passinault again asked Adamski whether there were any other guns, which Adamski denied. Passinault, however, ultimately discovered the stolen guns in Adamski's basement. When Passinault found these firearms, Adamski began to step backwards, prompting Passinault and another officer present to tell Adamski that he was not free to leave. Adamski told the officers that his father gave the guns to him several years ago.

The officers escorted Adamski upstairs and informed him he was going to be placed under arrest. To avoid any trauma to Adamski's children, the officers did not handcuff Adamski at that time. While in the process of leaving the home, Adamski asked to speak to his wife. Passinault agreed to allow him to do so while he listened. According to Passinault's recollection, in response to his wife's questions, Adamski said that "he knew it was stupid and knew he shouldn't have done it." Adamski then left the house and the officers placed him under arrest. Passinault handcuffed Adamski and put him in the cruiser, and then read him his *Miranda* rights.[4] Adamski, however, said that he was willing to waive his rights at that time.

When the officers returned to the station with Adamski, they again advised him of his rights and Adamski agreed to give a written statement. In his statement, Adamski said that he knew he should not have taken the firearms, but he did so to hold them as collateral for a financial debt Veytruba owed him.

The defense slightly expanded this collateral theory at trial, contending that Adamski and Veytruba had an *agreement* allowing Adamski to take the guns. Adamski and his wife, Debra Adamski, both testified that they sold a white pickup truck to Veytruba for $500 in July 1999, but that he never paid them for it. Adamski added that, on the day in question, he went to Veytruba's house and asked Veytruba about the debt. Veytruba reportedly said that he did not have the money to pay the debt, but that he could give Adamski some guns as collateral. Adamski then told Veytruba that he could not take the guns at that time, but would return later to retrieve them. Indeed, Adamski did return later in the day to take the guns.

---

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

Despite the Adamskis' testimony, Veytruba said that he did not give Adamski permission to take his guns. Nor did he give Adamski permission to enter his home that day when he was not there. Veytruba also denied having any arrangement with Adamski to use the guns as collateral for the debt.

II. Confession

A. Standard Of Review

Adamski first argues that the trial court erred in not suppressing the statement he made at home to his wife while he was in custody. According to Adamski, the statement was inadmissible because he was in police custody and had not yet been advised of his *Miranda* rights. Adamski failed to challenge the admissibility of this statement in the trial court, thereby failing to preserve this issue for our review. As a result, Adamski is not entitled to relief on this basis unless he establishes plain error affecting his substantial rights.[5]

B. *Miranda*

By requiring law enforcement to advise suspects of their rights, *Miranda* helps a suspect avoid compelled self-incrimination, which the Fifth Amendment bars.[6] "The failure to give *Miranda* warnings prior to a statement made during a custodial interrogation renders the statement inadmissible [at trial] for purposes other than impeachment."[7] However, the key words in this exclusionary rule are "custodial interrogation"; not every statement a suspect makes within earshot of a law enforcement agent must be suppressed in the absence of *Miranda* warnings.[8] "Interrogation refers to express questioning and to any words or actions *on the part of police* that the police should know are reasonably likely to elicit an incriminating response from the subject."[9]

There is no dispute that Adamski was in custody at the time he made the statement to his wife. While it is possible that his wife's entreaties convinced him to make the statement, it is clear that neither Passinault nor the other officer asked any questions or took any actions to prompt him to make the statement. In short, there was no interrogation. All the circumstances point to a statement made voluntarily, without any compulsion by law enforcement. Consequently, Adamski has failed to demonstrate the plain error that is the prerequisite to granting him relief.

---

[5] *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

[6] See *People v Attebury*, 463 Mich 662, 668; 624 NW2d 912 (2001).

[7] See *People v Raper*, 222 Mich App 475, 479; 563 NW2d 709 (1997).

[8] See *id*.

[9] *Id*. (emphasis added).

III. Ineffective Assistance Of Counsel

A. Standard Of Review

Adamski argues that he was denied his Sixth Amendment right to effective assistance of counsel when his trial attorney failed to challenge the admissibility of the statement he made to his wife, did not request a *Walker*[10] hearing on the matter, and failed to move to suppress evidence of his previous conviction. De novo review is appropriate for this issue because it presents a constitutional question[11] and does not require us to defer to the trial court in any respect.[12]

B. Legal Standards

As this Court explained in *People v Knapp*,[13]

> To establish a claim of ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness and that, but for defense counsel's errors, there was a reasonable probability that the result of the proceeding would have been different. *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994). A defendant must affirmatively demonstrate that counsel's performance was objectively unreasonable and so prejudicial as to deprive him of a fair trial. *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994). The defendant must also overcome the presumption that the challenged action might be considered sound trial strategy. *People v Tommolino*, 187 Mich App 14, 17; 466 NW2d 315 (1991), citing *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984).

Because Adamski did not raise these issues in the trial court, our review is limited to the existing record.[14]

C. Adamski's Statements

The first two arguments that Adamski now raises, both of which revolve around his voluntary statement to his wife, require little discussion. As we have already indicated, there is no merit to his contention that his statement was inadmissible because he had yet to be read his rights at the time he made the statement. The law does not require attorneys to engage in

---

[10] *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).

[11] See *People v Houstina*, 216 Mich App 70, 73; 549 NW2d 11 (1996).

[12] See, generally, *People v Toma*, 462 Mich 281, 303-305; 613 NW2d 694 (2000) (Supreme Court directly examined the evidence on the record).

[13] *People v Knapp*, 244 Mich App 361, 385-386; 624 NW2d 227 (2001).

[14] See *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000).

meritless steps to fulfill their roles as legal advocates and counselors.[15] Yet, this is exactly what Adamski claims his trial attorney should have done by arguing that the attorney was ineffective for failing to challenge his statement at trial or in a *Walker* hearing. There was no error requiring reversal in this respect.

D. Prior Conviction

As for Adamski's argument concerning his trial counsel's failure to ask the trial court to exclude evidence of his previous conviction for filing a false police report[16] pursuant to MRE 404(b), we also disagree that this was ineffective assistance. The court rules endorse multiple theories of admissibility, meaning that evidence that should be excluded on one ground may be admissible for other purposes.[17] In this case, even assuming that MRE 404(b) would have required the trial court to suppress the evidence of Adamski's previous conviction, Adamski does not dispute its admissibility pursuant to MRE 609. The prosecutor introduced this evidence in order to impeach Adamski's testimony, properly relying on the false statement element of the previous crime to demonstrate to the jury that he was not a credible witness.[18] Thus, Adamski has not demonstrated why his trial counsel should have made this meritless argument to the trial court.[19]

IV. Double Jeopardy

A. Standard Of Review

Adamski contends his multiple convictions for larceny in a building, receiving or concealing a stolen firearm, and felony-firearm violate the constitutional prohibitions against double jeopardy.[20] Review de novo is appropriate for this legal issue.[21]

B. Multiple Punishments

Adamski invokes the constitutional protection against multiple punishments for the same offense in that the essence of his argument is that he is being punished three times for the same criminal conduct. The constitutional bar against double jeopardy ensures that a defendant is not punished more severely than the Legislature intended.[22] However, "[t]his protection is a

---

[15] *People v Torres (On Remand)*, 222 Mich App 411, 425; 564 NW2d 149 (1997).

[16] See MCL 750.411a.

[17] See *People v VanderVliet*, 444 Mich 52, 73; 508 NW2d 114 (1993).

[18] See MRE 609(a)(1); *People v Parcha*, 227 Mich App 236, 241; 575 NW2d 316 (1997).

[19] See *Torres*, *supra* at 425.

[20] US Const, Am V; Const 1963, art 1, §15.

[21] See *People v Kulpinski*, 243 Mich App 8, 12; 620 NW2d 537 (2000).

[22] See *People v Griffis*, 218 Mich App 95, 100; 553 NW2d 642 (1996).

limitation on the courts and the prosecutors, not on the Legislature's power to define crimes and fix punishments."[23]

Blockburger v United States[24] articulates the proper analysis for a double jeopardy challenge under the federal constitution.[25] As the Michigan Supreme Court has explained, under *Blockburger*, we must examine whether each offense requires proof of an element for which the other offenses do not require proof.[26] If the necessary proof of each crime differs by even one factor, then we presume that conviction of more than one does not violate the bar against double jeopardy.[27] However, when analyzing a double jeopardy claim under the state constitution, we employ "more traditional means of determining legislative intent."[28] Relevant factors courts have considered in the past include whether the respective statutes prohibit conduct that violates distinct social norms, the punishments the statutes authorize, whether the statutes are hierarchical or cumulative, and any other factors that are suggestive of legislative intent.[29]

In *People v Mitchell*,[30] the Michigan Supreme Court held that dual convictions of receiving or concealing a stolen firearm and felony-firearm do not violate the constitutional prohibitions against double jeopardy. Given that *Mitchell* addressed the constitutional challenge under the state and federal constitutions, we need not address this issue further.

Under the reasoning in *Mitchell* that emphasizes the Legislature's limited exceptions in the language of the felony-firearm statute, it is also apparent that Adamski's dual convictions of larceny in a building and felony-firearm do not violate his double jeopardy rights under the state constitution.[31] Simply put, larceny is not an offense enumerated as an exception in the felony-firearm statute.[32] This combination of offenses also passes the *Blockburger* test, because larceny requires an unauthorized taking of property from a building, which is not required for a conviction for felony-firearm.[33] Additionally, felony-firearm requires that the defendant possess the firearm during the commission of another felony, which is not required for larceny. Therefore, Adamski's dual convictions of larceny and felony-firearm do not violate either constitutional prohibition against double jeopardy.

---

[23] *Id*. at 100-101.

[24] *Blockburger v United States*, 284 US 299, 304; 52 S Ct 180; 76 L Ed 306 (1932).

[25] See *People v Denio*, 454 Mich 691, 707; 564 NW2d 13 (1997).

[26] See *id*.

[27] *Id*.

[28] *Id*. at 708.

[29] *Id*. at 708-709.

[30] See *People v Mitchell*, 456 Mich 693, 697-698; 575 NW2d 283 (1998).

[31] *Id*. at 693.

[32] See MCL 750.227b.

[33] See MCL 750.227b and MCL 750.360.

The only remaining question is whether Adamski's convictions of larceny in a building and receiving or concealing a stolen firearm implicate his double jeopardy rights. Addressing the federal test first, conviction of larceny in a building requires proof that property of another was taken within the confines of a building, which is not an element needed to prove that a defendant received or concealed a stolen firearm.[34] Conversely, a conviction for receiving or concealing a stolen firearm requires proof that a person receives, conceals, stores, barters, sells, disposes of, or accepts as security for a loan, a firearm that has been stolen, none of which are required to establish a conviction for larceny. Given the different proofs that these crimes require, Adamski's dual convictions of these offenses did not violate his federal constitutional rights.

Nor do we see any state constitutional error in Adamski's conviction for the larceny and receiving and concealing offenses. MCL 750.360 and MCL 750.535b each address conduct that violates the social norm against the theft of property.[35] However, the focus of the larceny statute is the initial taking of property, whereas the receiving or concealing statute focuses on the facts that follow the taking. The crime of larceny is complete at the time of taking, before the crime of receiving or concealing takes place. These differences indicate that the Legislature intended separate punishments for these different types of criminal conduct. Additionally, these crimes do not appear either hierarchical or cumulative. In fact, the Legislature codified them in separate chapters of the Penal Code, further supporting our conclusion that the Legislature intended the multiple punishments under the circumstances of this case.[36] There was no state double jeopardy violation.

Affirmed.

/s/ William C. Whitbeck
/s/ Peter D. O'Connell
/s/ Patrick M. Meter

---

[34] See MCL 750.360 and MCL 750.535b.

[35] See, generally, *People v Ainsworth*, 197 Mich App 321, 326; 495 NW2d 177 (1992).

[36] *People v Rivera*, 216 Mich App 648, 651; 550 NW2d 593 (1996).