

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTONIO RAVELL BOLDEN,

Defendant-Appellant.

UNPUBLISHED

May 16, 1997

No. 173070

Ingham Circuit Court

LC No. 93-066664-FH

Before: Smolenski, P.J., and Michael J.Kelly and Gribbs, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of felon in possession of a firearm, MCL 750.224f; MSA 28.421(6), and sentenced to two to five years' imprisonment. Defendant appeals as of right. We affirm.

Defendant was attending a gathering at a friend's home when it was raided by police due to suspicion of narcotics. One officer testified that he observed defendant through a kitchen window holding a black semiautomatic handgun and then throwing the weapon out the window. Defendant denied having a gun and three other witnesses testified that they did not see defendant with a gun that evening. Defendant and his witnesses also testified that the kitchen light was inoperable, thus making the kitchen totally dark.

Defendant argues that the trial court's determination of guilt was based on insufficient evidence because the court made erroneous findings of fact regarding the lighting conditions and impermissibly relied on the contradicted testimony of a police officer. We disagree. The prosecution only had to establish that defendant was in possession of a firearm as the parties stipulated that defendant had been on parole for a felony conviction. In fulfilling his duty to weigh the testimony and assess the credibility of witnesses when conducting a bench trial, the judge rationally chose to believe the officer's testimony regarding possession and to disbelieve defendant's denial. Questions of credibility are properly resolved by the trier of fact. MCR 2.613(C); *In re Forfeiture of \$25,505*, 220 Mich App 572, 581; 560 NW2d 341 (1996). We find no clear error in the trial court's assessment of the credibility of the witnesses. \$25,505, *supra*. The trial judge's reference to the officer's impartiality was a statement as

to the court's view of his credibility. There is no basis for defendant's allegations of prejudice or bias toward the prosecutor. Further, the court's finding that there was sufficient ambient light for the officer to make an accurate identification was not clearly erroneous because the officer testified that there was light from the second floor apartment and from street lamps in the area. MCR 2.613(C); *People v Reeves*, ___ Mich App ___; ___ NW2d ___ (Docket No. 185225, issued 2/25/97), slip op, p 2; *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991). The court also relied on evidence that a large group of people made their way through the kitchen to the basement in a short period of time as support for the inference that some light existed in the kitchen. Viewing the evidence in the light most favorable to the prosecution, there was sufficient evidence to allow a trier of fact to find guilt beyond a reasonable doubt because the court could rationally believe that the officer's testimony was credible and that there was sufficient lighting for his identification of defendant to be accurate. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992).

Defendant also argues that the trial judge's findings of fact were insufficient because he failed to determine whether the kitchen lights were on or off. We disagree. The court clearly understood defendant's theory that insufficient lighting existed to permit an accurate identification but found that it did not need to actually determine whether the lights were on or off in light of its finding that sufficient other light existed to permit the identification. *Reeves, supra*. As noted previously, the finding was not clearly erroneous. *Id.*

Affirmed.

/s/ Michael R. Smolenski

/s/ Michael J. Kelly

/s/ Roman S. Gribbs