

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JIM WILLIAMS, JR.,

Defendant-Appellant.

UNPUBLISHED

February 26, 1999

No. 204928

Recorder's Court

LC No. 96-008058

Before: Whitbeck, P.J., and Cavanagh and Griffin, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions of possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(iv); MSA 14.15(7403)(2)(a)(iv), carrying a concealed weapon, MCL 750.227(2); MSA 28.424(2), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to two years' probation for the possession of less than twenty-five grams of cocaine conviction, two years' probation for the carrying a concealed weapon conviction, and the mandatory two years' imprisonment for the felony-firearm conviction. We affirm.

First, defendant argues that his convictions must be reversed because his waiver of jury trial was not knowingly, voluntarily, or intelligently made. We disagree. We review a trial court's determination that a defendant validly waived his right to a jury trial for clear error. *People v Leonard*, 224 Mich App 569, 595; 569 NW2d 663 (1997).

Defendant alleges that the trial court failed to advise him of the meaning of the right to a jury trial. However, this Court has previously ruled that the trial court is not required to explain the meaning of the right to a jury trial. *Id.* at 595-596.

Defendant also argues that the trial court failed to inquire into defendant's education, literacy, and familiarity with criminal proceedings. However, the relevant statute and court rule do not require that the trial court inquire into defendant's educational background or familiarity with criminal proceedings. MCL 763.3; MSA 28.856; MCR 6.402; *People v Pasley*, 419 Mich 297, 303; 353 NW2d 440 (1984).

Defendant further maintains that his waiver of a jury trial was invalid because the trial court failed to inform him that a different judge might conduct his bench trial. Judge Harvey F. Tennen conducted defendant's waiver of jury trial proceeding. However, Judge Isidore Torres conducted defendant's bench trial because Judge Tennen was involved in a jury trial.

In the instant case, there was only one trial, which Judge Torres conducted from opening statements to sentencing. Defendant never objected or moved to have his waiver withdrawn once he learned that Judge Torres would be conducting his bench trial, and he did not object when Judge Torres set forth his findings of fact and conclusions of law. The trial court was not required, either by the applicable statute or court rule, to inform defendant that a different judge could hear his trial. MCL 763.3; MSA 28.856; MCR 6.402; *Pasley, supra* at 302-303. Accordingly, the trial court's finding that defendant's waiver was voluntarily and understandingly made was not clearly erroneous.

Next, defendant argues that the trial court's findings of fact do not support defendant's convictions of felony-firearm and carrying a concealed weapon. We disagree. When the right to a trial by jury has been waived by a defendant, the trial court, sitting as factfinder, must make specific findings of fact and state its conclusions of law. *People v Shields*, 200 Mich App 554, 558; 504 NW2d 711 (1993). Factual findings are sufficient as long as it appears that the trial court was aware of the issues in the case and correctly applied the law. *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992). A court's failure to find the facts does not require remand where it is manifest that the court was aware of the factual issues, that it resolved the issues, and that further explication would not facilitate appellate review. *Id.* at 134-135. When reviewing a claim of insufficient evidence, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985).

Defendant seems to argue that the evidence was insufficient to sustain his convictions for carrying a concealed weapon and felony-firearm because the officers' testimony of the events leading to defendant's arrest differed from defendant's testimony. However, credibility is a matter for the trier of fact to ascertain. *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990). This Court will not resolve it anew. *Id.* at 380. The trial court obviously believed that when the officers saw defendant making dipping motions to the right he was concealing the cocaine and the gun.

When Officer Pritchett approached the car defendant was in after a routine traffic stop, he noticed defendant, who was the passenger in the front seat, make dipping motions toward his right side like he was about to conceal something. Officer Pritchett ordered defendant out of the car and when defendant opened the car door, a loaded nine millimeter blue steel automatic handgun fell out. This evidence was sufficient to support the trial court's findings that defendant carried or possessed the firearm and that the firearm was carried or possessed while defendant possessed less than twenty-five grams of cocaine in order to convict defendant of felony-firearm. MCL 750.227b; MSA 28.424(2); *Wayne Co Prosecutor v Recorder's Court Judge*, 406 Mich 374, 397; 280 NW2d 793 (1979). In addition, the prosecution presented sufficient evidence to show that a handgun was present in a vehicle occupied by defendant, that defendant knew or was aware of its presence, and that he was "carrying"

it. MCL 750.227(2); MSA 28.424(2); *People v Courier*, 122 Mich App 88, 90; 332 NW2d 421 (1982).

Defendant also argues that the only finding of fact which supported defendant's convictions was the trial court's conclusion that guns are commonly used in the drug community. While the trial court did mention the use of guns in the drug community, this was not the only finding that supported defendant's convictions. The trial court found that when defendant concealed the drugs in his shoe, he also attempted to conceal the gun. The trial court's exact words were as follows:

I accepted the prosecutor's position in this matter at the time that you gestured that not only were the drugs in your tennis shoe as admitted by you, but in addition you were concealing the gun which is commonly used in the drug community and obviously I'm of the opinion you were in possession of that weapon.

Accordingly, the trial court's factual findings were sufficient as it appears that the trial court was aware of the issues in the case and correctly applied the law. *Legg, supra* at 134. In addition, the evidence was sufficient to support defendant's convictions of carrying a concealed weapon and felony-firearm.

Affirmed.

/s/ William C. Whitbeck

/s/ Mark J. Cavanagh

/s/ Richard Allen Griffin