STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FLOYDELL LI GRIFFITH,

Defendant-Appellant.

UNPUBLISHED
October 13, 2009

No. 286064
Wayne Circuit Court
LC No. 08-004034-FH

Before: M. J. Kelly, P.J., and K. F. Kelly and Shapiro, JJ.

PER CURIAM.

Defendant appeals as of right from his jury-trial convictions of felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court imposed sentences of time served for the felon in possession conviction, and two years' imprisonment for the felony-firearm conviction. We affirm, but remand for correction of the judgment of sentence.

This case arises from the police's discovery of a handgun in defendant's possession when they investigated reports of gunshots inside a Detroit residence. Before trial, defendant moved to suppress the evidence that he possessed the firearm on the ground that its discovery followed from an illegal search. The trial court denied the motion.

On appeal, defendant argues that that the trial court erred in denying his motion. We disagree. In reviewing a trial court's decision following a suppression hearing, we review the trial court's factual findings for clear error, but review the legal conclusions de novo. See *People v Daoud*, 462 Mich 621, 629-630; 614 NW2d 152 (2000). Evidence obtained in violation of a suspect's rights under the Fourth Amendment of the United States Constitution is subject to suppression at trial. *People v Cartwright*, 454 Mich 550, 557-558; 563 NW2d 208 (1997). "Searches and seizures conducted without a warrant are unreasonable per se, subject to several specifically established and well-delineated exceptions." *People v Borchard-Ruhland*, 460 Mich 278, 293-294; 597 NW2d 1 (1999). Among these "is a search conducted pursuant to consent." *Id.* at 294.

The trial court found that "under any number of alternative theories" the search in question was legal, then elaborated that the police needed no consent to search what appeared to be a vacant dwelling, that consent was given, and that the police reasonably sought to discover the source of gunshots before someone was injured by such shooting. In our view, the trial court

correctly decided the motion on the ground of consent, and thus the alternative exceptions need not be considered. At the suppression hearing, a police officer testified that he was called to the residence in response to a report that shots had been fired inside. The officer stated that the house appeared vacant, but that after he knocked on the door several times, defendant answered. According to the officer, defendant allowed him to enter the house and "gave us permission to search the dwelling." A second officer confirmed that defendant gave permission to enter and search the premises. Thus, because the officers had consent to enter and search the building, the ensuing search was not illegal and defendant's Fourth Amendment rights were not violated.

Defendant, however, argues that the police created a coercive environment such that he did not feel at liberty to resist a search. This argument contradicts defendant's specific testimony that the police asked him for permission to search and that he denied it. Further, "[c]redibility is a matter for the trier of fact to ascertain [and we] will not resolve it anew." *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990). The trial court did not clearly err in crediting the police officers' accounts over defendant's contrary testimony. Accordingly, the trial court did not err by denying the motion to suppress.

Lastly, we note that the trial court improperly sentenced defendant to concurrent sentences of 23 days for time already served in the Wayne County jail for his felon in possession conviction and to two years for his felony-firearm conviction, with 23 days jail credit. At sentencing, the trial court stated,

> Thank you. All right. Mr. Griffith, the Court has reviewed your presentence report. The Court notes for the record, there was a conviction and the Court is going to accordingly on count two, the Felony Firearm, sentence you to two years in the Department of Corrections. You're entitled to twenty-three days credit. On the Felon in Possession I'm going to sentence you to twenty-three days in the county jail with credit for twenty-three days served.

The court did not indicate on the record that the sentences were to be served consecutively. Moreover, in addition, the judgment of sentence provides that the sentences are concurrent. This is error. A sentence for felony-firearm must run before, and consecutive to, other terms of incarceration to which the defendant is subject. See MCL 750.227(b). Accordingly, it is necessary for us to remand to the trial court to correct the judgment, such that his felony-firearm sentence precedes and runs consecutively with his sentence for felon in possession and that the 23 days credit is properly applied to only his felon in possession charge. In other words, the trial court must not grant defendant credit for the 23 days twice because the two sentences run consecutively. See *People v Cantu*, 117 Mich App 399, 400-403; 323 NW2d 719 (1982).

Remanded for correction of judgment of sentence. We do not retain jurisdiction.

/s/ Michael J. Kelly
/s/ Kirsten Frank Kelly
/s/ Douglas B. Shapiro