

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

LAJUAN ZACHARY SMITH,

Defendant-Appellant.

UNPUBLISHED

August 28, 2008

No. 278587

Wayne Circuit Court

LC No. 07-007009-01

Before: Cavanagh, P.J., and Jansen and Kelly, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of felon in possession of a firearm, MCL 750.224f, possession of a firearm during the commission of a felony, MCL 750.227b, and carrying a concealed weapon, MCL 750.227. Defendant was sentenced to 30 days' probation for felon in possession of a firearm and carrying a concealed weapon, and to ten years in prison for felony-firearm, third offense. Defendant appeals by right, and we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Officer Janoskey testified that while approaching several individuals who were drinking in public, he observed defendant make a hand motion from his coat pocket to behind his back. Janoskey did not see a specific object in defendant's hand, but concluded that the motion was an attempt to conceal something. Subsequently, Janoskey noticed a firearm on the step where defendant had been sitting. The next closest individual was several steps above, and about three feet behind defendant. Defendant had two previous felony-firearm convictions. Defendant maintained that he was not in possession of a firearm on the night in question and stated that he was not wearing a coat or jacket; rather, he was wearing only a T-shirt that did not have pockets.¹

Defendant argues that his convictions violated his right to due process because they were not supported by sufficient evidence. We disagree. When reviewing the sufficiency of evidence, we must view the evidence *de novo* in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that the elements of the crime were proven

¹ The incident occurred at approximately 1:00 a.m. in the middle of March in Detroit.

beyond a reasonable doubt. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005). We do not assume the factfinder's role of determining the credibility of witnesses or the weight of the evidence. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 749, amended 441 Mich 1201 (1992).

MCL 750.224f(2) provides that:

A person convicted of a specified felony . . . shall not possess . . . a firearm in this state until all of the following circumstances exist:

(a) The expiration of 5 years after all of the following circumstances exist:

(i) The person has paid all fines imposed for the violation.

(ii) The person has served all terms of imprisonment imposed for the violation.

(iii) The person has successfully completed all conditions of probation or parole imposed for the violation.

(b) The person's right to possess . . . a firearm has been restored pursuant to section 4 of Act No. 372 of the Public Acts of 1927, being section 28.424 of the Michigan Compiled Laws.

A specified felony includes a felony in which "an element of that felony is the unlawful possession . . . of a firearm." MCL 750.224f(6)(iii).

MCL 750.227b(1) provides in part:

A person who carries or has in his or her possession a firearm when he or she commits or attempts to commit a felony, except a violation of section 223, section 227, 227a or 230, is guilty of a felony, and shall be imprisoned for 2 years. . . . Upon a third or subsequent conviction under this subsection, the person shall be imprisoned for 10 years.

A person shall not carry a concealed pistol on his or her person, except in his or her dwelling, in his or her place of business, or other land possessed by him or her, without a license to do so. MCL 750.227(2).

Janoskey indicated that a firearm was found where defendant moved his hand behind his back. The closest individual was about three feet away, and was situated above defendant. The motion by defendant, combined with the lack of observed motions by other individuals, plus the absence of any noise that would likely sound if a firearm was tossed at least three feet, could lead a rational trier of fact to conclude beyond a reasonable doubt that defendant was the source of the firearm, regardless of whether the firearm was found directly on defendant's person.

The trial court was in the best position to make credibility determinations used to establish the elements of the case, including whether defendant was in possession of the firearm. The prosecution was not required to disprove all theories that could exonerate defendant as long as the prosecution has presented sufficient evidence to prove the elements of the charged

offenses in the face of defendant's contradictory evidence. *People v Williams*, 268 Mich App 416, 421; 707 NW2d 624 (2005).

Viewing the evidence in the light most favorable to the prosecution, sufficient evidence was presented at trial based on Janoskey's observations and reasonable inferences by the trier of fact to establish that defendant possessed the firearm. Once the prosecution established that defendant possessed the firearm, it was not necessary to disprove that others might have possessed the firearm.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly