

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK HARRIS,

Defendant-Appellant.

UNPUBLISHED

December 22, 2009

No. 287733

Wayne Circuit Court

LC No. 07-011841-FH

Before: K. F. Kelly, P.J., and Hoekstra and Whitbeck, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant appeals as of right. We affirm.

On July 5, 2007, just before 1:00 a.m., Detroit Police Officers Mitchell, Owen, and Conley were dispatched to investigate reports of a person with a gun and shots fired. Enroute, they encountered defendant walking in a semi-well-lit area. Defendant began to run, and the officers pursued in their vehicle. Defendant's left hand come up from his hip area, and the officers saw a shiny silver object drop to the ground. The officers pulled to the curb and detained defendant. As Mitchell and Conley arrested defendant, Owen searched the area in which the silver object was tossed. He found a shiny nickel-plated pistol. Defendant claimed that he threw a beer can, but Owen found no beer can in the area. The police did not take any fingerprints from the pistol, nor did they test defendant for the presence of gunshot residue.

The police vehicle was equipped with a standard video recording device. Defense counsel made a discovery request for the video from the vehicle. But no video was found to exist, and no video was ever provided. There was some confusion as to whether the video was ever downloaded at the end of the officers' shift or was lost once downloaded. According to the officers, the recording system in the vehicle operates on a continuous loop, so that if the video is not downloaded, the video will tape over itself when the tape is full. The trial court found that there was no gross negligence or willful attempt on the part of the police to destroy the video.

Defendant first argues that the evidence was insufficient to support his convictions of felon in possession of a firearm and felony-firearm. Specifically, defendant claims that the evidence was insufficient to show that he possessed the pistol. We disagree. When reviewing the sufficiency of the evidence, we must view the evidence in the light most favorable to the

prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005). Circumstantial evidence and reasonable inferences arising therefrom may establish the elements of a crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

As the officers chased defendant, they saw him toss a silver object from his person. An officer found a nickel-plated pistol in the area. Although defendant claimed the object he tossed was a beer can, no beer can was found in the area. The jury was aware that the police did not test the pistol for fingerprints, nor did they perform any testing for gunshot residue. It is the province of the jury to determine the weight to be accorded to the testimony of the witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found beyond a reasonable doubt that the object tossed by defendant was the nickel-plated pistol.

Defendant next argues that he was denied due process when the police failed to preserve the video recording of the incident. We disagree. We review de novo a defendant's claim that he was denied due process. *People v Schumacher*, 276 Mich App 165, 176; 740 NW2d 534 (2007).

Unless a defendant can show that the evidence was exculpatory, intentionally suppressed, or that the prosecution or police acted in bad faith, the loss of evidence is not a violation of the defendant's due process rights, and does not require reversal. *Arizona v Youngblood*, 488 US 51, 57-58; 109 S Ct 333; 102 L Ed 2d 281 (1988); *People v Johnson*, 197 Mich App 362, 365; 494 NW2d 873 (1992). Defendant merely states that the video recording "may have been important evidence for the defense." When the exculpatory value of the evidence is speculative, the defendant must show bad faith on the part of the police in order to establish a due process violation. *Youngblood*, *supra* at 57-58. At trial, defendant presented no evidence of bad faith, and based on the record before it, the trial court found that there was no gross negligence or willful attempt by the police to destroy the video. There is nothing in the record, other than defendant's own assertions, that the police engaged in bad faith. A defendant cannot rely on his own bald assertions to meet his burden of establishing the exculpatory nature of the evidence or the bad faith conduct of the police. See *Johnson*, *supra* at 365-366. We find no support for defendant's claim that he was denied due process by the failure of the police to preserve the video recording.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Joel P. Hoekstra
/s/ William C. Whitbeck