

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
October 25, 2011

v

LINDSEY VERNON SMITH,
Defendant-Appellant.

No. 299349
Wayne Circuit Court
LC No. 09-026979-FH

Before: FORT HOOD, P.J., and HOEKSTRA and METER, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions for possession of a firearm during the commission of a felony, MCL 750.227b, and felon-in-possession of a firearm, MCL 750.224f. The trial court acquitted defendant of carrying a concealed weapon, MCL 750.227. Defendant was sentenced as an habitual offender, second offense, MCL 769.10, to two years' imprisonment for his felony-firearm conviction and two years' probation for his felon-in-possession conviction. Because defendant's convictions are supported by sufficient evidence, we affirm.

Defendant argues that his convictions are not supported by sufficient evidence because no evidence connected him to the handgun recovered by the police near Lucky's Bar. We disagree.

We review a challenge to the sufficiency of the evidence in a bench trial de novo. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). The evidence is viewed "in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proved beyond a reasonable doubt." *Id.* Circumstantial evidence and the reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime. *People v Gayheart*, 285 Mich App 202, 216; 776 NW2d 330 (2009).

The elements of felon-in-possession, a felony, are (1) the defendant possessed a firearm, (2) the defendant had been previously convicted of a felony, and (3) less than five years had elapsed since the defendant had been discharged from probation or parole. MCL 750.224f(3); *People v Perkins*, 262 Mich App 267, 270-271; 686 NW2d 237 (2004), aff'd 473 Mich 626 (2005). Defendant stipulated to the fact that the law forbid him from possessing a firearm at the time of his arrest. "The elements of felony-firearm are that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony." *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). A conviction for felon-in-possession may constitute the

predicate felony for felony-firearm. *People v Calloway*, 469 Mich 448, 452; 671 NW2d 733 (2003). Accordingly, if defendant's conviction for felon-in-possession is supported by sufficient evidence, then his conviction for felony-firearm is also supported by sufficient evidence. The only issue, therefore, is whether the prosecution presented sufficient evidence to prove beyond a reasonable doubt that defendant possessed the handgun that the officers recovered near Lucky's Bar.

Whether the defendant possessed an object is a question of fact and can be established by circumstantial evidence. *People v Burgenmeyer*, 461 Mich 431, 437; 606 NW2d 645 (2000). The prosecution presented sufficient circumstantial evidence that defendant possessed the handgun found at the scene. Officer Seed testified that he saw defendant throw a dark object over the fence as defendant ran from the officers. Officer Seed also testified that the alley was well-lit and that he never lost sight of defendant during the chase. After returning to the place where defendant threw the object, Officer Seed found the handgun. Officer Seed did not find any other objects in the area, and there was nobody else in the alley during this time period. This evidence, when viewed in the light most favorable to the prosecution, sufficiently supports the trial court's finding that defendant possessed the handgun and threw it over the fence to avoid being caught with the handgun. That Officer Stevens testified that he never lost sight of defendant and did not observe defendant throw an object and that defendant's fingerprints were not found on the handgun does not render the evidence insufficient. We may not interfere with the trial court's determinations regarding the credibility of the witnesses, *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992), and the presence of fingerprints is not an element of either charged crime. The evidence, when viewed in the light most favorable to the prosecution, was sufficient for the trial court to find beyond a reasonable doubt that defendant possessed the handgun.

Defendant also argues that because the trial court found that he did not carry a concealed weapon, it impliedly found insufficient evidence to convict him of possession of the handgun. The concealed weapon statute provides that "[a] person shall not carry a pistol concealed on or about his or her person." MCL 750.227. To convict a defendant of carrying a concealed weapon the prosecution must prove that the defendant possessed and concealed the handgun. *People v Czerwinski*, 99 Mich App 304, 306; 298 NW2d 16 (1980). Because the offense of carrying a concealed weapon requires the prosecution to prove the additional element of concealment, the trial court's acquittal of defendant on the concealed weapon charge does not imply a finding that defendant lacked possession of the handgun.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Joel P. Hoekstra

/s/ Patrick M. Meter