

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ARIC DJUAN MALLETT,

Defendant-Appellant.

UNPUBLISHED

August 16, 2005

No. 254408

Wayne Circuit Court

LC No. 03-010637-01

Before: Zahra, P.J., and Cavanagh and Owens, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of possession of a firearm during the commission of a felony, MCL 750.227b, and possession with intent to distribute marijuana, MCL 333.7401(2)(d)(iii). Defendant was sentenced to two years' imprisonment for the felony-firearm conviction, preceding and consecutive to two years' probation for the controlled substance conviction. Defendant appeals as of right, challenging his felony-firearm conviction and seeking to correct apparent errors in his presentence investigation report (PSIR) and judgment of sentence in connection with his controlled substance conviction. We affirm the felony-firearm conviction, but remand for the ministerial task of correcting the judgment of sentence and PSIR. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant does not dispute his guilt of possessing marijuana, but argues that the prosecution failed to present sufficient evidence at trial to show that he had concurrently possessed a firearm. We disagree.

When reviewing a challenge to the sufficiency of the evidence, "a court must view the evidence in a light most favorable to the prosecution . . . [and] determine whether any rational trier of fact could have found that the essential elements of the crime were proven as required." *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005). The trial court found that defendant signed and initialed a confession admitting that he picked up two guns on the occasion of his arrest, and that his fingerprints would be on them. The court also credited police testimony establishing that defendant was inside and immediately fled the house where the guns were confiscated when the police entered. Defendant denied being in the house or possessing the guns, but the court was free to disbelieve defendant's testimony. "Questions of credibility are

left to the trier of fact and will not be resolved anew by this Court.” *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999).

The nature of a drug-possession offense is such that it can take place over an extended period, requiring the trier of fact in this case to determine whether defendant possessed the marijuana and the guns simultaneously at any moment during that time. See *People v Burgenmeyer*, 461 Mich 431, 439-440; 606 NW2d 645 (2000). Deferring to the trial court’s superior position to judge witness credibility, *Avant, supra*, and viewing the evidence presented in a light most favorable to the prosecution, *Tombs, supra*, we conclude that sufficient evidence was presented to support the felony-firearm conviction.

However, the PSIR and judgment of sentence erroneously indicate that defendant was convicted of possession with the intent to deliver cocaine, MCL 333.7401(a), and the PSIR also erroneously indicates that defendant was convicted by plea. The record clearly indicates that defendant was convicted by the court of possession with intent to distribute marijuana, not cocaine.

The erroneous indications suggest that defendant was convicted of a drug offense carrying a maximum sentence of life imprisonment, while the crime of which he was actually convicted carries a maximum of four years. These errors could prejudice defendant in connection with any future involvement with the criminal justice system, and perhaps in other ways. Further, the integrity of our judiciary demands that official documents accurately reflect the proceedings involved. See *Avant, supra* at 521.

For these reasons, we remand this case to the trial court solely for the ministerial task of correcting the judgment of sentence and PSIR to accurately reflect that defendant was convicted, at a bench trial, of a marijuana offense.¹

Affirmed, but remanded for correction of the judgment of sentence and PSIR. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Donald S. Owens

¹ Plaintiff expressly declined to oppose defendant’s request for this remedy.