

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
June 14, 2012

V

KENNY DEQUINDALE DANCY,
Defendant-Appellant.

No. 301663
Wayne Circuit Court
LC No. 10-007459-FH

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

PER CURIAM.

Defendant was convicted, following a bench trial, 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(1). He was sentenced to one to five years' imprisonment for the felon in possession of a firearm offense and five years' imprisonment for the felony-firearm, second offense, conviction.¹ Defendant appeals as of right. We affirm.

Defendant contends that the prosecution failed to provide sufficient evidence that defendant was in possession of a firearm to support his felon in possession of a firearm and felony-firearm convictions. We disagree. "This Court reviews de novo a challenge to the sufficiency of the evidence in a bench trial." *People v Lanzo Constr Co*, 272 Mich App 470, 473-474; 726 NW2d 746 (2006). To conclude whether sufficient evidence has been presented to sustain a conviction, the evidence must be viewed in a light most favorable to the prosecution to determine whether the court could find that the essential elements of the crime were proven beyond a reasonable doubt. *Id.* at 474. Any conflicts in the evidence presented at trial must be resolved in favor of the prosecution. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005).

Felon in possession of a firearm and felony-firearm both require proof that the defendant possessed a firearm. *People v Peals*, 476 Mich 636, 640; 720 NW2d 196 (2006). In order to secure a conviction for felony-firearm, the prosecution must prove beyond a reasonable doubt

¹ Defendant was acquitted of count two of the information, carrying a concealed weapon, MCL 750.227.

that defendant “possessed a firearm during the commission of or the attempt to commit, a felony.” *People v Taylor*, 275 Mich App 177, 179; 737 NW2d 790 (2007); see also MCL 750.227b(1). A felon in possession of a firearm conviction requires the prosecution to prove that defendant is a convicted felon who possessed a firearm and fewer than three years have passed since he paid all fines, served all terms of imprisonment, and successfully completed all terms of probation or parole imposed for the violation. *People v Perkins*, 262 Mich App 267, 269; 686 NW2d 237 (2004); MCL 750.224f(1). “Possession of a firearm can be actual or constructive, joint or exclusive.” *People v Johnson*, 293 Mich App 79, 83; 808 NW2d 815 (2011) (footnote omitted). It can be established by direct or circumstantial evidence and presents a factual question for the trier of fact. *Id.*

Defendant argues that he could not be convicted of either offense where there was insufficient evidence that he possessed a firearm. We disagree. Despite defendant’s arguments on appeal, there was sufficient evidence to prove that he possessed a firearm. Detroit Police Officer Anthony Jones presented direct testimony that he observed defendant removing a firearm from his waistband and discarding it on the ground. Questions regarding the credibility of witnesses are a matter for the trial court, as the trier of fact, to decide. *People v Fetterley*, 229 Mich App 511, 545; 583 NW2d 199 (1998). The finder of fact weighed the credibility of the officer to determine if the testimony was believable and concluded that the testimony sufficiently established that defendant possessed a firearm. Therefore, although defendant argues that he is entitled to relief based on the below reasons, when viewed in the light most favorable to the prosecution, the elements of the charged offenses were proven beyond a reasonable doubt. *Lanzo Constr*, 272 Mich App at 473-474.

First, defendant argues that his fingerprints were never traced to the recovered handgun and paraphernalia. Circumstantial evidence and reasonable inferences drawn from that evidence are sufficient to sustain a felony-firearm conviction even when the defendant’s fingerprints are not found on a handgun. *People v Godbold*, 230 Mich App 508, 522; 585 NW2d 13 (1998). Similarly, evidence of another person’s fingerprints found on a firearm does not negate a finding that the defendant was in possession of the weapon. See *People v Daniel*, 207 Mich App 47, 59; 523 NW2d 830 (1994). The existence of recoverable fingerprints is not an element of the crimes for which defendant was convicted. MCL 750.227b(1); MCL 750.224f(1).

Defendant next argues that Officer Jones offered inconsistent testimony regarding the color of the handgun that he alleged defendant possessed at the time of arrest. It is clear, however, from reviewing the trial transcript that there was no discrepancy regarding the color of the handgun, particularly after the officer’s memory was refreshed by the police record taken on the day of the incident. Moreover, the officer was shown the gun in question at trial and confirmed that it was the weapon dropped by defendant.

Next, defendant argues that the evidence tag number affixed to the recovered firearm did not match the evidence number presented at trial and that the prosecution failed to offer any evidence to prove that the handgun met the definition of “firearm.” These issues are not preserved for appellate review because they were not raised, addressed, and decided in the trial court. *People v Metamora Water Serv*, 276 Mich App 376, 382; 741 NW2d 61 (2007). Consequently, our review is limited to plain error affecting substantial rights. *People v Danto*, 294 Mich App 596, 605; ___ NW2d ___ (2011).

Defendant failed to demonstrate plain error affecting his substantial rights. Any error in assigning an evidence tag to the firearm recovered from the scene did not negate Officer Jones's specific testimony that he saw defendant in possession of a firearm. Furthermore, at trial, the officer confirmed that the firearm admitted into evidence was the same firearm that defendant possessed on the day in question.

Additionally, defendant failed to support the factual predicate for his claim that possibly a pellet gun, as opposed to a firearm, was the weapon recovered at the scene because the caliber was not mentioned on the record. See *People v Matuszak*, 263 Mich App 42, 60; 687 NW2d 342 (2004). Moreover, this argument is without merit given that Officer Jones testified to recovering defendant's handgun, which was loaded with 25 live rounds of ammunition. Accordingly, these unpreserved claims of error do not provide defendant with appellate relief.

Finally, defendant challenges the credibility of Officer Jones by arguing that his testimony of the incident was more incredible than credible. As previously stated, questions regarding the credibility of witnesses are a matter for the trial court, as the trier of fact, to decide. *Fetterley*, 229 Mich App at 545. Further, findings of fact by the trial court may not be set aside by this court unless clearly erroneous or in exceptional circumstances, such as testimony that contradicts indisputable facts or is patently incredible, to take the issue of witness credibility away from the trier of fact. MCR 2.613(C); *People v Lemmon*, 456 Mich 625, 642-644; 576 NW2d 129 (1998).

In the present case, defendant questions the officer's testimony that defendant threw down his gun in plain view of the officer and "quietly waited in the backyard of the scene of the alleged incidents to be arrested." However, defendant presented no evidence to contradict the officer's testimony other than the assertion that the story appears to be implausible. This alone is an insufficient reason to take the issue of witness credibility away from the trial court, and thus, viewing this issue in the light most favorable to the prosecution, the officer's testimony was sufficient to establish that defendant unlawfully possessed a firearm.

Affirmed.

/s/ Deborah A. Servitto
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood