

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
October 16, 2012

V

BOBBY LAVELL CURRY,

Defendant-Appellant.

No. 305355
Wayne Circuit Court
LC No. 10-010479-FH

Before: JANSEN, P.J., and FORT HOOD and SHAPIRO, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of carrying a concealed weapon (CCW), MCL 750.227, possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, and felon in possession of a firearm, MCL 750.224f(2). Defendant was sentenced to two years in prison for the felony-firearm conviction and three years of probation for his CCW and felon in possession of a firearm convictions. We affirm.

During a traffic stop, a passenger ran from the car and was chased by one of the two officers that had stopped the car. The chasing officer was within 8-10 feet of the suspect when the suspect threw what appeared to be a handgun into nearby brush. A gun was later recovered from that spot. The chasing officer tripped and so lost sight of the suspect, but an alert was issued based on a description of the suspect and the location of the events. Shortly thereafter, other officers arrested defendant a few blocks away. The officers that conducted the traffic stop went to the scene of the arrest and identified defendant as the person who ran from the car and disposed of the handgun.

At trial, defendant stipulated through counsel that he had previously been convicted of a specified felony under MCL 750.224f(2) and so could not have lawfully possessed a firearm at the time of his arrest.

On appeal, defendant asserts that he did not received effective assistance of counsel at trial. The only basis for this claim is defendant's argument that counsel was ineffective for stipulating that defendant was subject to MCL 750.224f(2) as a person previously convicted of a specified felony. Defendant's brief seems to suggest that had defense counsel not agreed to the stipulation, the prosecution would have been unable to demonstrate that he fell within the scope of MCL 750.224f(2) which provides:

(2) A person convicted of a specified felony shall not possess, use, transport, sell, purchase, carry, ship, receive, or distribute 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, use, transport, sell, purchase, carry, ship, receive, or distribute 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.

Despite making this argument, however, defendant does not assert that his prior conviction was not a specified felony, nor that five years had passed since he completed his parole, nor that his rights to possess a firearm had been restored pursuant to MCL 28.424. Indeed, defendant's brief concedes that he was not discharged from probation until October 21, 2005, less than five years from the date of the instant arrest. Put simply, defendant asks us to conclude that his counsel was deficient for stipulating to facts that defendant himself does not refute in his brief on appeal. Thus, defendant wholly fails to demonstrate any error by his attorney in this regard.

Defendant's brief arguably also challenges the sufficiency of the evidence as to identity. Such an argument fails. Defendant was convicted based on the identification testimony of two officers that the trial court found to be credible. And although the driver of the car testified that defendant had not been a passenger in the car that night, the trial court concluded that the credibility of this testimony "on a scale of zero to ten, [was] . . . a negative 18". Assessments of credibility are for the trier of fact. *People v Harrison*, 283 Mich App 374, 378; 768 NW2d 98 (2009). This Court should not interfere with the factfinder's role of determining the weight of evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748, amended 441 Mich 1201 (1992); *People v Eisen*, 296 Mich App 326, 331; ___ NW2d ___ (2012). Accordingly, we conclude that there was sufficient evidence on the issue of identity.

Affirmed.

/s/ Kathleen Jansen
/s/ Karen Fort Hood
/s/ Douglas B. Shapiro