

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee

v

RODNEY COLLINS,

Defendant-Appellant

UNPUBLISHED

July 26, 2012

No. 304938

Wayne Circuit Court

LC No. 09-027583-FH

Before: TALBOT, P.J., and SERVITTO and M. J. KELLY, JJ.

PER CURIAM.

Defendant Rodney Collins appeals by right his jury convictions of possession of a short-barreled shotgun or rifle, MCL 750.224b, possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, and assaulting, battering, wounding, resisting, obstructing, opposing, or endangering a person performing a duty (resisting an officer), MCL 750.81d. The trial court sentenced defendant to serve nine months to five years in prison for possessing a short-barreled shotgun, to two years in prison for felony-firearm, and to nine months to two years in prison for resisting an officer. On appeal, defendant challenges the sufficiency of the evidence in support of his convictions. Because we conclude that there was sufficient evidence, we affirm.

Defendant first argues that there was insufficient evidence to support his conviction of possessing a short-barreled shotgun. Specifically, he maintains that there was no evidence that he actually or constructively possessed the shotgun at issue. This Court reviews a challenge to the sufficiency of the evidence by examining the record evidence “de novo in the light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt.” *People v Roper*, 286 Mich App 77, 83; 777 NW2d 483 (2009).

In order to convict defendant of possessing a short-barreled shotgun, the prosecution had to prove that defendant actually or constructively possessed a short-barreled shotgun. *People v Hill*, 433 Mich 464, 470; 446 NW2d 140 (1989). A “short-barreled shotgun” includes a shotgun that has one or more barrels less than 18 inches in length. *Id.* at 472 n 5, citing what is now MCL 750.222(i). Whether a defendant had possession of a shotgun is generally a question for the jury and the prosecution can prove possession through circumstantial evidence. *Id.* at 469.

Here, the prosecution presented the testimony of a witness who saw defendant in actual possession of a shotgun: Jerimiah Head testified that he saw a man walking down the street with approximately eight inches of a shotgun protruding from his coat. He saw the man trying to shove the barrel back into his sleeve. He did not see the man's face, but called the police and gave them a description of the man and his clothing. Head watched the man turn a corner and walk out of sight. He also testified that the police officers arrived approximately one minute or one minute and 30 seconds after he called.

Officers Joseph Lalli testified that he responded to the call and saw defendant walking down the street; he then shined a spotlight on defendant. Lalli ordered defendant to "stop" and to drop what he had in his sleeve. Officer Craig Waple testified that he arrived in a separate car from Lalli and saw defendant wearing clothing that matched the description of the clothing worn by the man with the shotgun. Lalli and Waple both testified that they saw defendant walking toward an area of shrubbery and heard the sound of metal striking metal, or metal striking rock or cement. In addition, Lalli witnessed defendant toss an object sideways into the shrubbery.

Waple approached defendant and began to struggle with him. Lalli testified that, during the struggle, defendant attempted to run back to the shrubbery. After the officers arrested defendant, Waple searched through the shrubbery and recovered a short-barreled shotgun next to what appeared to be a slab of concrete. Waple testified that only about two or three minutes elapsed from the time he heard the noise in the bushes to when he recovered the shotgun from the shrubbery. Another officer testified that the shotgun had a 14 inch barrel.

Taking this evidence together, a reasonable jury could conclude beyond a reasonable doubt that defendant actually possessed the shotgun found in the shrubbery and that the shotgun was a short-barreled shotgun. Although defendant testified that he did not possess the shotgun and did not enter the shrubbery, this Court must resolve questions of witness credibility in favor of the verdict. *People v Malone*, 287 Mich App 648, 654; 792 NW2d 7 (2010). There was sufficient evidence to sustain his conviction of possession a short-barreled shotgun. *Roper*, 286 Mich App at 83.

Defendant also argues there is insufficient evidence to support his conviction of resisting an officer under MCL 750.81d. Specifically, he contends that there was insufficient evidence to establish that he knew or had reason to know the men he resisted were police officers performing their duty.

In order to prove that defendant resisted an officer, the prosecution had to prove that defendant "assaulted, battered, wounded, resisted, obstructed, opposed, or endangered a police officer" and that he "knew or had reason to know that the person that the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered was a police officer performing his or her duties." *People v Corr*, 287 Mich App 499, 503; 788 NW2d 860 (2010). Defendant does not argue that he did not resist the men who confronted him, he merely argues that there was no evidence that he knew or should have known that the men were officers and that they were acting in the performance of their duty.

The prosecution can satisfy the second element by presenting evidence that the defendant had actual knowledge that the men were police officers. *People v Nichols*, 262 Mich App 408, 413-414; 686 NW2d 502 (2004). Additionally, “[t]he prosecution could sustain its burden by proving defendant had constructive, implied, or imputed knowledge, or by using the record evidence to show that a defendant should have had knowledge on the basis of the facts and circumstances of the case.” *Id.* at 414.

Head testified that he saw two marked police cars arrive after he called. Waple and Lalli both testified that they arrived in the area in full uniform and in fully marked police cars. Neither officer had the lights or sirens on in his police car, but Lalli shined a spotlight on defendant. Head also testified that he saw a spotlight turn on. Lalli yelled “stop, police,” or “stop, River Rouge Police Department.” Lalli also told defendant to drop what defendant had in his sleeve. When defendant began to struggle with Waple, Waple told defendant to “get on the ground.” Lalli warned defendant during the altercation to “stop resisting [Waple] or [you] will be tasered.” Throughout the struggle, Waple attempted to handcuff defendant, and the officers told defendant to put his hands behind his back. Lalli tasered defendant several times and defendant continued to resist.¹

Defendant, however, testified that he did not see or hear police cars pull up and did not see a spotlight being shined on him. He also testified that the police officers did not say, “stop, police,” before or during the altercation. According to defendant, he was walking after dark when his instincts told him to turn around. When he did so, someone approached and grabbed him. Defendant testified that it took him 10 to 20 seconds from when Waple grabbed him to realize that the men were police officers. He testified that he stopped struggling once he realized they were officers.

Although defendant’s testimony differs from the officers’ testimony, we must “draw all reasonable inferences and examine credibility issues in support of the jury verdict.” *Malone*, 287 Mich App at 654. The evidence that both Waple and Lalli arrived in uniform and in fully marked cars along with the evidence that Lalli identified himself as a police officer and ordered defendant to stop permits an inference that defendant knew or should have known that Waple and Lalli were officers. Similarly, the evidence that defendant tried to discard the shotgun after he was approached is strong evidence that he actually knew that Waple and Lalli were officers. Finally, the testimony that defendant continued to struggle even after Lalli used his taser on him and after Waple tried to handcuff him is evidence that, even if defendant did not at first realize that Waple and Lalli were officers, he nevertheless continued to resist after he should have reasonably known that Waple and Lalli were officers. Therefore, there was sufficient evidence to establish defendant’s knowledge. *Roper*, 286 Mich App at 83.

¹ We note that defendant does not argue that the officers acted unlawfully.

Affirmed.

/s/ Michael J. Talbot
/s/ Deborah A. Servitto
/s/ Michael J. Kelly