

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
December 27, 2012

v

RONNIE LEON JENKINS,

Defendant-Appellant.

No. 306436
Wayne Circuit Court
LC No. 11-002544-FH

Before: RONAYNE KRAUSE, P.J., and SERVITTO and SHAPIRO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions 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. Defendant was sentenced to seven months to five years' imprisonment for his felon in possession of a firearm conviction and two years' imprisonment for his felony-firearm conviction. We affirm because there was no prosecutorial misconduct, defense counsel was not ineffective, and there was sufficient evidence to support defendant's convictions.

I. FACTS

While patrolling on February 27, 2011, officers Michael Smith and Thomas Rogers saw defendant walking between a building and a Kroger semi-trailer. The officers believed that defendant intended to break into the trailer. Once he noticed the policemen, defendant walked in the opposite direction.

The officers testified that they called out to defendant as he started to walk up to the porch of a house, and that as defendant walked onto the porch and knocked on the door, the officers saw the handle of a handgun in defendant's jacket pocket. The officers testified that they knew it was a handgun because of the curvature of the handle. Defendant then entered the house. Smith ran to the back of the house to prevent defendant's escape while Rogers entered the house through the front door.

Officer Rogers testified that he saw defendant enter a bedroom in the back of the house, but he could not immediately see into the bedroom. As he approached, however, he saw defendant pulling his hands from underneath the mattress in the bedroom. A pat-down search of defendant revealed nothing, but Rogers recovered from underneath the mattress a revolver with

the same handle that he had observed in defendant's pocket on the porch. The revolver was not tested for fingerprints, but Rogers identified it in court as the same one possessed by defendant.

II. PROSECUTORIAL MISCONDUCT

Defendant argues he was denied a fair trial due to prosecutorial misconduct because the prosecutor vouched for the credibility of the police witnesses.

An unpreserved issue of prosecutorial misconduct is reviewed for plain error. *People v Ackerman*, 257 Mich App 434, 448-449; 669 NW2d 818 (2003). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear and obvious, and 3) the plain error affected substantial rights." *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

The prosecutor did not improperly vouch for the credibility of police witnesses. "[A] prosecutor may not vouch for the credibility of [her] witness by implying that [s]he has some special knowledge of their truthfulness." *People v Thomas*, 260 Mich App 450, 455; 678 NW 2d 631 (2004). However, "a prosecutor may comment on [her] own witnesses' credibility during closing argument, especially when there is conflicting evidence and the question of the defendant's guilt depends on which witnesses the jury believes." *Id.*

Defendant contends that the prosecutor was using her special knowledge to state that if the police witnesses were lying, they most certainly would have told the jury a different version of events. During closing arguments, the prosecutor stated:

They follow [defendant] into the home. Then the officer once again—this is a prime example of the fact that these officers are being truthful with you, because if these officers were making this up then they would say, "I took this gun right off of [defendant's] hip," but the officers said, "Look, I saw the handle of the gun. I saw the gun. He entered the home. I did lose sight of him." Again, this is reasonable. He went around the corner. I know I wouldn't want to chase someone around a corner that I'd just seen with a gun—for safety, but—when he does peer around the corner to see, that's when he sees a hand coming out from the mattress.

The prosecutor was not implying that she had some "special knowledge" of the truthfulness of the police officers. In fact, the prosecutor made no comments about her personal knowledge or belief regarding the truthfulness of the police witnesses; she merely argued that the police officer's testimony was reasonable and used the facts to do so. There is no indication that the prosecutor attempted "to place the credibility of [her] office behind the case or suggest that [s]he possessed extrajudicial information on which defendant should be convicted." *People v Reed*, 449 Mich 375, 399; 535 NW2d 496 (1995). Therefore, there was no error.

III. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant next argues that defense counsel's failure to object to the prosecutor's comments deprived defendant of the effective assistance of counsel. However, as discussed above, the prosecutor did not attempt to place the credibility of her office behind the case or

suggest that she possessed extrajudicial information on which defendant should be convicted. *Reed*, 449 Mich at 399. As a result, any objection would have been futile. Failing to raise a futile objection does not constitute ineffective assistance of counsel. See *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010).

IV. SUFFICIENCY OF THE EVIDENCE

Defendant contends that the prosecution did not present sufficient evidence to convict him because he did not possess a firearm.

When reviewing a claim of insufficient evidence, this Court reviews the record de novo on appeal. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). The Court reviews the evidence in the light most favorable to the prosecutor and determines whether a rational trier of fact could conclude that the essential elements of the crime were proven beyond a reasonable doubt. *People v Nimeth*, 236 Mich App 616, 622; 601 NW2d 393 (1999). Circumstantial evidence and reasonable inferences from that evidence may be sufficient to prove the elements of a crime. *Id.*

A rational trier of fact could find that the essential elements of felon in possession of a firearm and felony-firearm were proven beyond a reasonable doubt. Felony-firearm requires: (1) the defendant carry or possess a firearm, (2) during the commission or attempted commission of a felony. *People v Johnson*, 293 Mich App 79, 83; 808 NW2d 815 (2011). Felon in possession of a firearm requires: (1) the defendant possess or carry a firearm in the state, (2) he was convicted of a felony, and (3) failed to restore his right to possess a weapon by paying fines, serving all terms of imprisonment, or completing requirements for probation or parole. *People v Perkins*, 262 Mich App 267, 270; 686 NW2d 237 (2004). Defendant challenges only whether the evidence was sufficient to show that he possessed a firearm.

There was sufficient evidence that defendant possessed a firearm. Rogers and Smith testified to seeing the handle of a handgun in defendant's right jacket pocket while on the front porch of a house on Mayfield Street. The officers were able to tell that it was a handgun by the curvature of the handle. Rogers then went into the house, where he saw defendant enter a bedroom in the back of the house. Rogers could not immediately see into the bedroom when defendant entered. However, he did see defendant pull his hands from underneath the bedroom mattress. Rogers conducted a pat-down search of defendant and then went back into the bedroom, where he recovered a revolver underneath the mattress from the same area where he saw defendant pull his hands. This revolver had the same handle that Rogers observed protruding from defendant's pocket earlier on the porch. The prosecutor presented the revolver in court and Rogers identified the revolver to be the same one possessed by defendant on the night of the incident. Viewing this evidence in the light most favorable to the prosecutor, there is sufficient evidence for a reasonable jury to conclude that defendant possessed a firearm.

Affirmed.

/s/ Amy Ronayne Krause

/s/ Deborah A. Servitto

/s/ Douglas B. Shapiro