

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DIONYSIS TOBIAS WHITE,

Defendant-Appellant.

UNPUBLISHED

September 16, 2021

No. 354203

Kalamazoo Circuit Court

LC No. 2018-001838-FH

Before: MURRAY, C.J., and M. J. KELLY and O'BRIEN, JJ.

PER CURIAM.

Defendant appeals as of right his jury-trial convictions of being a felon in possession of a firearm (felon-in-possession), MCL 750.224f; possessing a firearm while committing or attempting to commit a felony (felony-firearm), MCL 750.227b; carrying a concealed weapon, MCL 750.227; and resisting or obstructing a police officer, MCL 750.81d(1). We affirm.

This case stems from an interaction between defendant and police officers, which resulted in a police officer chasing defendant on foot. In the early morning hours of October 5, 2018, Kalamazoo Public Safety Officer Spencer Brignall approached defendant (who was on foot) and another individual (who was on a bike) and ordered them to stop. Kalamazoo Public Safety Officer Nick Oliver arrived at the scene within one minute of Officer Brignall's arrival. When Officer Oliver arrived, he also instructed defendant to stop. Defendant then began running, and Officer Oliver chased him.

The chase spanned two to three blocks. During the chase, defendant ran between neighboring houses. Officer Oliver observed defendant throw a gun over a fence while running between houses. Shortly after Officer Oliver saw defendant throw a gun, the foot chase ended, and defendant was taken into custody. Police officers searched the yard that defendant threw the gun into and recovered a pistol.

Defendant was convicted as stated earlier, and he now appeals.

Defendant first claims that the trial court erred by instructing jurors that they could find a conviction of felony-firearm without also finding a conviction of felon-in-possession. However,

defense counsel repeatedly stated that he had no objection to the jury instructions and that he approved of the instructions. By repeatedly and explicitly approving of the jury instructions, defendant waived the right to contest the instructions given to the jury. *People v Kowalski*, 489 Mich 488, 503; 803 NW2d 200 (2011). In light of this waiver, there is no error to review.¹

Defendant's second claim of error is that there was insufficient evidence to support that he possessed the firearm, so the trial court should have granted his motion for a directed verdict on his charges for felon-in-possession, felony-firearm, and carrying a concealed weapon. We disagree.

This Court reviews de novo a defendant's challenge to the sufficiency of the evidence. *People v Meissner*, 294 Mich App 438, 452; 812 NW2d 37 (2011). When analyzing a motion for a directed verdict of acquittal, it is not permissible for a trial court to determine the credibility of witnesses, no matter how inconsistent or vague that testimony might be. *People v Mehall*, 454 Mich 1, 6; 557 NW2d 110 (1997). Circumstantial evidence and the reasonable inferences that arise from the evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). To determine whether a rational trier of fact could have found the essential elements of the crime to have been proven beyond a reasonable doubt, the evidence is viewed in the light most favorable to the prosecution. *Id.*

On the issue of whether defendant possessed a firearm, Officer Oliver testified that while he was chasing defendant, he saw defendant throw a gun over a backyard fence. Another officer testified that he found a gun in a backyard near the location where he was told defendant had thrown a gun. When viewing this evidence in the light most favorable to the prosecution, a rational trier of fact could have found beyond a reasonable doubt that defendant actually possessed the firearm that was recovered by police.

Defendant argues that Officer Oliver's testimony was not corroborated by the footage from the officer's body camera, and that the prosecution did not present any fingerprint or DNA evidence connecting defendant to the gun. But it is for the trier of fact to determine the credibility of Officer Oliver's testimony and the weight to give the evidence presented at trial. See *People v Likine*, 492 Mich 367, 407; 823 NW2d 50 (2012). Therefore, defendant's argument does not warrant relief.

Defendant's final claim of error is that he received ineffective assistance of counsel because his defense counsel did not object to the jury instruction on the elements of felon-in-possession and felony-firearm. We disagree.

To prevail on a claim of ineffective assistance of counsel, defendant must demonstrate that (1) defense counsel's representation fell below an objective standard of reasonableness, and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the trial

¹ During instructions, one of the jurors voiced confusion about the difference between felony-firearm and felon-in-possession, and the trial court repeated its instructions. To the extent that defendant's challenge on appeal is focused on this portion of the trial court's instructions, defense counsel at trial explicitly approved of this instruction as well, waiving any error.

would have been different. *Strickland v Washington*, 466 US 668, 688, 694; 104 S Ct 2052; 80 L Ed 674 (1984). When analyzing whether defense counsel's representation fell below an objective standard of reasonableness, defense counsel is "strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *People v Vaughn*, 491 Mich 642, 670; 821 NW2d 288 (2012).

On the first prong of the *Strickland* test, defendant has failed to rebut the strong presumption that defense counsel's performance was reasonable. The jury instruction at issue was taken verbatim from the Michigan Model Criminal Jury Instructions, see M Crim JI 11.34, and was an accurate statement of the law, see *People v Goree*, 296 Mich App 293, 304; 819 NW2d 82 (2012). Further, the trial court was required to read M Crim JI 11.34 to the jury because it was applicable, it accurately stated the law, and a party requested that the instruction be read. See MCR 2.512(D)(2). For defense counsel to object to the reading of M Crim JI 11.34 would have been meritless, and defense counsel is not required to advance a meritless position. See *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000).

Additionally, after a juror indicated that she was confused about the elements of felon-in-possession and felony-firearm, the trial court reiterated the elements and explained that the two counts relate to each other. Following that explanation, neither that juror nor any of the other jurors indicated that they were confused about the instructions. It was objectively reasonable for defense counsel to believe that no objection was needed because the jurors accurately understood the law on that topic.

Accordingly, defendant has failed to establish a claim of ineffective assistance of counsel.

Affirmed.

/s/ Christopher M. Murray
/s/ Michael J. Kelly
/s/ Colleen A. O'Brien