

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CARL EBON SIMMONS,

Defendant-Appellant.

UNPUBLISHED

February 1, 2005

No. 250903

Wayne Circuit Court

LC No. 03-005290-01

Before: Zahra, P.J., and Neff and Cooper, JJ.

MEMORANDUM.

Defendant Carl Ebon Simmons appeals as of right from his bench trial convictions of carrying a concealed weapon (CCW), 750.227(2), felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to two years' probation for the CCW and felon in possession convictions, to be served concurrently with the mandatory two-year term for felony-firearm. We affirm.

Defendant's sole claim on appeal is that the evidence was insufficient to sustain the verdict. However, defendant does not dispute that the evidence presented by the prosecutor, if believed, was sufficient to enable a rational trier of fact to conclude that each element of the crimes charged had been proved beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). He contends only that his testimony that he did not have a gun, coupled with the lack of fingerprints on the gun recovered by the officers, created a reasonable doubt.

Witness credibility is a matter of weight, not sufficiency, of the evidence. *People v Scotts*, 80 Mich App 1, 9; 263 NW2d 272 (1977). Furthermore, the issue of witness credibility is one for the trier of fact to determine. *People v Velasquez*, 189 Mich App 14, 16; 472 NW2d 289 (1991). "As a general rule, the trial judge, as trier of fact, has the duty to weigh the testimony and assess the credibility of the witnesses." *People v Snell*, 118 Mich App 750, 755; 325 NW2d 563 (1982). This Court will not substitute its judgment for that of the trial court but will defer to the trial court's resolution of factual issues that involve the credibility of witnesses. *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997); *People v Martin*, 199 Mich App 124, 125; 501 NW2d 198 (1993). The prosecution presented sufficient evidence to establish the

elements of each offense. The trial court weighed the conflicting testimony and chose to disbelieve defendant's version of events. We defer to the trial court's findings and hold that there was sufficient evidence to support defendant's convictions.

Affirmed.

/s/ Brian K. Zahra
/s/ Janet T. Neff
/s/ Jessica R. Cooper