

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
September 3, 2013

v

ELBERT DARNELL POWERS,

Defendant-Appellant.

No. 310144
Wayne Circuit Court
LC No. 11-008890-FH

Before: MURPHY, C.J., and MARKEY and RIORDAN, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of attempted carrying a concealed weapon (CCW), MCL 750.92; MCL 750.227. Defendant was sentenced to two years of probation. We affirm.

I. FACTUAL BACKGROUND

Two Detroit police officers were on patrol in an unmarked police car in Detroit. While driving, they observed three males, one of whom was defendant, standing around a car in a vacant lot. When the officers shined their light on the three men, the men dispersed. Defendant began walking faster than the other men, breaking away from the pack. Both officers observed that defendant was gripping his waistband. One officer described seeing a large object in defendant's hand while the other officer believed he saw the handle of a handgun.

The officers began following defendant to the porch of a house. Defendant sat down on a chair and the officers observed that there were several individuals on the porch. The officers walked from their car and one of them approached the porch. The officer saw defendant grip his side again and saw the outline of the handgun underneath defendant's T-shirt. A physical confrontation ensued, but defendant eventually was subdued and arrested. After defendant was handcuffed, one of the officers lifted up defendant's t-shirt and found a handgun "inside of his waistband inside of his pants on the right hip," held in place with defendant's tightened belt.

At trial, defendant testified that the handgun belonged to his fiancée. He claimed that he was carrying it to the car for her, it was in a holster on his right hip, it was visible, and his shirt was tucked into his belt. Both officers testified that they did not see a holster. Defendant was convicted of attempted CCW. Defendant now appeals.

II. SUFFICIENCY OF THE EVIDENCE

A. Standard of Review

Defendant contends that there was insufficient evidence to support his conviction. This Court reviews challenges to the sufficiency of evidence de novo. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). We review the evidence in the light most favorable to the prosecutor and resolve all conflicts of the evidence in favor of the prosecution. *Id.*

B. Analysis

Defendant argues that there was insufficient evidence that he attempted to conceal the handgun because he was openly carrying it while taking it to the car. The elements of CCW include proof that defendant carried a weapon concealed on his person or in a vehicle without a license to carry it. MCL 750.227. To be concealed, a weapon does not have to be completely invisible. *People v Hernandez-Garcia*, 266 Mich App 416, 421-422; 701 NW2d 191 (2005) aff'd in part and vacated in part on other grounds 477 Mich 1039 (2007). Rather, concealment occurs when the weapon “is not discernible by the ordinary observation of persons casually observing the person carrying it.” *Id.* (quotation marks and citation omitted). “Evidence that a defendant placed a revolver in his belt or waistband so that the weapon could not be readily seen has been found sufficient to uphold a CCW conviction.” *Id.* “MCL 750.92 establishes criminal liability when an individual attempts to commit a crime and performs an act leading toward the commission of that offense, even if the individual fails in, or is otherwise stopped from perpetrating, the offense.” *People v Kissner*, 292 Mich App 526, 539; 808 NW2d 522 (2011).

Here, the officers both testified that when they flashed a light on defendant near a vacant car, he began walking away and fidgeting with his waistband. They followed defendant to the porch of a nearby house, and one of the officers observed defendant grip his side. The officer saw the outline of a gun underneath defendant’s shirt. When arresting defendant, the officer had to lift up defendant’s shirt to recover the weapon, which was tightened in defendant’s belt. From this evidence, the trier of fact could reasonably conclude that the handgun was not readily observable. Even if the well-trained officers deduced what the object was, the fact that defendant had the gun underneath his shirt indicated that he was attempting to conceal it.¹ Despite defendant’s claims, neither officer testified to seeing a readily visible holster, and all conflicts in the evidence are resolved in favor of the prosecution. *Wilkens*, 267 Mich App at 738.

Although defendant argues that he never concealed or attempted to conceal the handgun, this Court will not interfere with the factfinder’s role in determining issues of weight and credibility. *People v Eisen*, 296 Mich App 326, 331; 820 NW2d 229 (2012). Rather, this Court must draw all reasonable inferences in support of the trier of fact’s verdict, and that deferential

¹ Further, there was sufficient evidence that defendant intended to do the act prohibited, namely, “knowingly carry[ing] the weapon on one’s person,” *People v Combs*, 160 Mich App 666, 673; 408 NW2d 420 (1987), because defendant had the gun tightened in his waistband underneath his shirt.

standard is the same “whether the evidence is direct or circumstantial.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Thus, viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a rational trier of fact to find beyond a reasonable doubt that defendant attempted to conceal the handgun.

III. CONCLUSION

There was sufficient evidence to sustain defendant’s conviction for attempted CCW. We affirm.

/s/ William B. Murphy

/s/ Jane E. Markey

/s/ Michael J. Riordan