

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHNNY RAY ROBINSON,

Defendant-Appellant.

UNPUBLISHED

April 8, 1997

No. 185745

Calhoun Circuit Court

LC No. 94-002947-FH

Before: Neff, P.J., and Smolenski and D. A. Roberson,* JJ.

PER CURIAM.

Defendant appeals as of right his conviction of carrying a concealed weapon (CCW), MCL 750.227(2); MSA 28.242(2). Defendant frames his issue on appeal as whether the jury's verdict goes against the great weight of the evidence; however, we find that his argument is more akin to a challenge to the sufficiency of the evidence. We reverse.

Due process requires the prosecutor to introduce evidence sufficient to justify a trier of fact in concluding that defendant was guilty beyond a reasonable doubt. *People v Fisher*, 193 Mich App 284, 287; 483 NW2d 242 (1992). When reviewing a challenge to the sufficiency of the evidence, we view the evidence in a light most favorable to the prosecution. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). If, when viewed from this perspective, the evidence was insufficient to permit a rational trier of fact to find that the essential elements of the crime were proven beyond a reasonable doubt, defendant's conviction may not stand. *People v Herbert*, 444 Mich 466, 473; 511 NW2d 654 (1993).

To support a conviction for carrying a weapon in a motor vehicle, the prosecutor must show: (1) the presence of a weapon in a vehicle operated or occupied by the defendant; (2) that the defendant knew or was aware of its presence, and (3) that he was "carrying" it. *People v Courier*, 122 Mich App 88, 90; 332 NW2d 421 (1982). Our Supreme Court has held that the element of "carrying" requires more than the mere intersection of presence and knowledge. *People v Butler*, 413 Mich 377,

* Recorder's Court judge, sitting on the Court of Appeals by assignment.

384; 319 NW2d 540 (1982). Relevant factors in determining whether the evidence supports a finding that defendant “carried” a weapon discovered in a vehicle include:

(1) the accessibility or proximity of the weapon to the person of the defendant, (2) defendant’s awareness that the weapon was in the motor vehicle, (3) defendant’s possession of items that connect him to the weapon, such as ammunition, (4) defendant’s ownership or operation of the vehicle, and (5) the length of time during which defendant drove or occupied the vehicle. [*Butler, supra* at 390 n11]

We have carefully reviewed the record in this case and are persuaded that the evidence, viewed in a light most favorable to the prosecution, was insufficient to establish the element of “carrying”. There is no evidence that defendant was ever in close proximity to the revolver prior to its discovery by the investigating officer, and no ammunition was discovered on defendant’s person. Although defendant is the owner of the vehicle in question, there is no evidence that defendant was aware of the weapon’s presence in the vehicle’s trunk. To the contrary, the prosecutor presented evidence that defendant’s nephew fired the gun at the victim and that defendant “most definitely” appeared surprised to see the gun in the trunk. The prosecutor’s theory, that defendant both brought the revolver to the scene and gave it to his nephew to use, is simply unsupported by the evidence.

Because the evidence is insufficient to sustain the jury’s guilty verdict, we reverse.

Reversed.

/s/ Janet T. Neff

/s/ Dalton A. Roberson