

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LLOYD ALLEN HAYES,

Defendant-Appellant.

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UNPUBLISHED

December 19, 1997

No. 195333

Kent Circuit Court

LC No. 95-003326 FH

Before: McDonald, P.J., and Wahls and J. R. Weber\*, JJ.

PER CURIAM.

Defendant appeals by right his bench trial convictions of carrying a pistol in an automobile, MCL 750.227; MSA 28.424 and of being a felon in possession of a firearm, MCL 750.227b; MSA 28.424(2), for which he received enhanced sentences as a fourth offender, MCL 769.12; MSA 28.1084. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first contends that the trial court abused its discretion in denying his motion for new trial. The first aspect of the motion for new trial was a claim that one of the State's witnesses testified under a false name. This newly discovered evidence goes only to credibility and was properly deemed by the trial court not to furnish a suitable basis for new trial. *People v Duncan*, 414 Mich 877; 322 NW2d 714 (1982); *People v Barbara*, 400 Mich 352; 255 NW2d 171 (1977).

Defendant next claims that his Sixth Amendment right of compulsory process was infringed because a defense witness, Joan Debri, was under medication when called to testify on defendant's behalf. The motion for new trial is not supported by an affidavit by any competent witness to support the notion that Debri was under the influence of drugs at the time of her testimony, nor expert medical opinion to indicate how such medication might have affected her competency as a witness. Nor is there an affidavit from Debri herself to indicate that her testimony would have been different in some substantive respect. The trial court did not abuse its discretion in denying defendant's motion for new trial on this basis. *People v Canter*, 197 Mich App 550; 496 NW2d 336 (1992).

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\* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant further contends that the evidence at trial was insufficient to establish that he was actually carrying a pistol in an automobile, and thus for purposes of the felon in possession statute, that he possessed a pistol. *People v Butler*, 413 Mich 377; 319 NW2d 540 (1982). Here, the pistol was found immediately under a toiletry kit belonging to defendant, properly leading to an inference that the gun was in the glove compartment of defendant's vehicle when he placed his kit in that position. Additionally, there was testimony that a paper bag containing a bottle of soda which defendant purchased while driving the vehicle contained ammunition and a clip for the weapon, leading to a proper inference that defendant both "carried" and "possessed" the firearm. *People v Meadows*, 26 Mich App 675; 182 NW2d 721 (1970). Accordingly, a rational trier of fact in a bench trial could properly have found defendant's guilt of the substantive offenses proved beyond a reasonable doubt based on this evidence. *People v Petrella*, 424 Mich 221, 269-270; 380 NW2d 11 (1985).

Affirmed.

/s/ Gary R. McDonald

/s/ Myron H. Wahls

/s/ John R. Weber