

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK JOHNSON,

Defendant-Appellant.

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UNPUBLISHED

September 22, 2000

No. 215202

Wayne Circuit Court

LC No. 98-005095

Before: Talbot, P.J., and Hood and Gage, JJ.

MEMORANDUM.

Following a bench trial, defendant was convicted of carrying a concealed weapon (CCW), MCL 750.227(2); MSA 28.424(2) and was sentenced to one years' probation. He appeals as of right. We affirm.

Defendant argues that there was insufficient evidence to support his conviction because the prosecutor failed to prove that the gun was operable. We disagree. This Court reviews the sufficiency of the evidence in a bench trial in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-270; 380 BW2d 11 (1985). A conviction for CCW requires proof that (1) the defendant knowingly carried a pistol and (2) the pistol was concealed on or about person of the defendant. *People v Combs*, 160 Mich App 666, 673; 408 NW2d 420 (1987); CJI2d 11.1.

Although a "pistol," as defined under the concealed weapons statute, must be operable, an affirmative showing of operability is not necessary to establish a prima facie case. *People v Parr*, 197 Mich App 41, 45; 494 NW2d 768 (1992); *People v Gardner* 194 Mich App 652, 653-654; 487 NW2d 515 (1992). However, an affirmative defense to a charge of CCW can be made by proof that the pistol would not fire and could not readily be made to fire. *Parr, supra* at 45; *Gardner, supra* at 655. A successful defense requires a showing that the gun is "totally inoperable and cannot be readily repaired" *People v Hill*, 433 Mich 464, 476; 446 NW2d 140 (1989) (citing CJI 11:1:09, currently CJI2d 11.6, with approval).

In this case, testimony from two police officers established that defendant was carrying a nine millimeter gun in his waistband without a permit, and that the gun was loaded with twelve rounds of ammunition. *Parr, supra* at 45 (a loaded gun creates inference of operability). Moreover, a defense witness testified that defendant's gun was either misfiring or working intermittently at a shooting range hours before defendant's arrest. To the extent defendant argues that the trial court was inconsistent in believing some, but not all, of his witness' testimony, issues concerning witness credibility are appropriately left for the trier of fact and will not be resolved anew by this Court. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999); *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Viewing the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found that the gun was operable and that all the elements of CCW were proven beyond a reasonable doubt. *Parr, supra* at 45; *Gardner, supra* at 656.

Affirmed.

/s/ Michael J. Talbot

/s/ Harold Hood

/s/ Hilda R. Gage