

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH J. LOVE, JR.,

Defendant-Appellant.

UNPUBLISHED

May 25, 2001

No. 221309

Wayne Circuit Court

Criminal Division

LC No. 99-002600

Before: Jansen, P.J., and Zahra and Owens, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction of carrying a concealed weapon (CCW) in a vehicle, MCL 750.227(2); MSA 28.424(2), entered after a bench trial. We affirm.

Defendant was found asleep in his vehicle, which was stuck in a snow bank. A police officer who investigated and woke defendant observed a handgun in the waistband of defendant's pants. Defendant testified that earlier in the evening an intoxicated passenger had displayed the gun, and he had confiscated it. Defendant stated that after he dropped off the passenger, he determined that he was too intoxicated to drive further, and pulled over to the spot where he was discovered. The trial court found defendant guilty. In doing so, the court rejected defendant's defense of momentary or innocent possession of the gun.

When reviewing a challenge to the sufficiency of the evidence in a bench trial, we view the evidence presented in a light most favorable to the prosecution, and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. The trier of fact may make reasonable inferences from evidence in the record, but may not make inferences completely unsupported by any direct or circumstantial evidence. *People v Petrella*, 424 Mich 221, 268-270, 275; 380 NW2d 11 (1985); *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

In a bench trial, the court must make findings of fact and state separately its conclusions of law. MCR 6.403. Findings are sufficient if it appears that the court was aware of the issues and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). We review a trial court's findings of fact for clear error. MCR 2.613(C); *People v Hermiz*, 235

Mich App 248, 255; 597 NW2d 218 (1999), aff'd by equal division 462 Mich 71; 611 NW2d 783 (2000).

The elements of CCW in a vehicle are: (1) the pistol was in a vehicle operated or occupied by the defendant; (2) the defendant knew that the pistol was in the vehicle; and (3) the defendant took part in carrying or keeping the pistol in the vehicle. CJI2d 11.1. Carrying a concealed weapon is a general intent crime. The only intent needed is that necessary to do the prohibited act, i.e., to knowingly carry a weapon in a vehicle. *People v Combs*, 160 Mich App 666, 673; 408 NW2d 420 (1987). The element of "carrying" is not specifically defined, *People v Butler*, 413 Mich 377, 390; 319 NW2d 540 (1982), but is distinct from knowledge of the weapon's presence in the vehicle, and does not automatically follow from proof of knowledge. *People v Courier*, 122 Mich App 88, 90; 332 NW2d 421 (1982). The momentary or innocent possession of a weapon resulting from the disarming of a wrongful possessor constitutes a valid defense to the charge of CCW if the person seizing the weapon intended to surrender the weapon to law enforcement officials at the earliest opportunity. *People v Coffey*, 153 Mich App 311, 314-316; 395 NW2d 250 (1986). If the prosecution proves the elements of a weapons offense, the burden of proving any "exception, excuse, proviso or exemption" shifts to the defendant. MCL 776.20; MSA 28.1274(1).

Defendant argues that the evidence was insufficient to support his conviction. We disagree and affirm. The evidence showed that the weapon was located in defendant's vehicle and on his person. Defendant's testimony established that he confiscated the weapon from his friend, placed it in the waistband of his pants, and retained it. This evidence supported the trial court's finding that defendant knowingly carried a weapon in his vehicle. CJI2d 11.1; *Vaughn*, *supra*. Defendant's assertion that his intoxication made him ignorant of the weapon's presence, and thus left him without the requisite intent, *People v Williamson*, 200 Mich 342, 346; 166 NW 917 (1918), is without merit. Voluntary intoxication is not a defense to a general intent crime. *People v Langworthy*, 416 Mich 630, 638; 331 NW2d 171 (1982). Furthermore, defendant failed to sustain his burden of proving that his possession of the weapon was momentary or innocent. No evidence showed that defendant's friend had wrongful possession of the weapon, or that defendant intended to surrender it to law enforcement officials at the earliest possible opportunity. *Coffey*, *supra*. Viewed in a light most favorable to the prosecution, the evidence was sufficient to support defendant's conviction. *Petrella*, *supra*.

Affirmed.

/s/ Kathleen Jansen
/s/ Brian K. Zahra
/s/ Donald S. Owens