

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TROY DEAN PERTTU,

Defendant-Appellant.

UNPUBLISHED

July 27, 2001

No. 223965

Oakland Circuit Court

LC No. 99-167384-FC

Before: Wilder, P.J., and Hood and Griffin, JJ.

PER CURIAM.

Defendant appeals as of right from a jury conviction of carjacking, MCL 750.529a, for which he was sentenced as an habitual offender, third offense, MCL 769.11, to seven to twenty years in prison. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant contends that the trial court erred in denying his motion to quash the carjacking charge and that the evidence was insufficient to support the verdict because he did not take the vehicle from the victim's presence and did not use force or violence to accomplish the taking.

In reviewing the sufficiency of the evidence in a criminal case, this Court must review the record de novo and, viewing the evidence in a light most favorable to the prosecution, determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997); *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of the crime. *People v Gould*, 225 Mich App 79, 86; 570 NW2d 140 (1997). All conflicts in the evidence are to be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

The elements of carjacking are "(1) that the defendant took a motor vehicle from another person, (2) that the defendant did so in the presence of that person, a passenger, or any other person in lawful possession of the motor vehicle, and (3) that the defendant did so either by force or violence, by threat of force or violence, or by putting the other person in fear." *People v Davenport*, 230 Mich App 577, 579; 583 NW2d 919 (1998). A thing is in a person's presence if

it is within his reach, inspection, observation, or control such that he could retain possession were he not overcome by violence or prevented by fear. *People v Raper*, 222 Mich App 475, 482; 563 NW2d 709 (1997). Accord *People v Green*, 228 Mich App 684, 695-696; 580 NW2d 444 (1998).

The victim parked his car next to a gas station mini-market but left the engine running while he stepped inside. The defendant attempted to take the vehicle but was unsuccessful because he could not get the car in gear. The victim witnessed the attempt and ran out to stop it. He jumped on the driver's side running board and reached in the back seat window to try to pull defendant out of the driver's seat. Defendant finally was able to put the car in gear and drove off with the victim still hanging on. Defendant began swerving as he picked up speed, trying to throw the victim off the vehicle. The victim, who feared injury, jumped off and defendant drove away with the vehicle. Given the ongoing nature of the offense, we find that the evidence was sufficient to prove the elements of the crime charged beyond a reasonable doubt.

Because the evidence was sufficient to support the conviction, we need not address defendant's claim of error regarding the bindover. *People v Dunham*, 220 Mich App 268, 276-277; 559 NW2d 360 (1996); *People v Meadows*, 175 Mich App 355, 359; 437 NW2d 405 (1989).

Affirmed.

/s/ Kurtis T. Wilder

/s/ Harold Hood

/s/ Richard Allen Griffin