

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EARNEST JONES,

Defendant-Appellant.

UNPUBLISHED

September 17, 2002

No. 234908

Wayne Circuit Court

LC No. 00-009965

Before: Whitbeck, C.J., and Sawyer and Kelly, JJ.

PER CURIAM.

Defendant Earnest Jones appeals as of right from a conviction of carrying a concealed weapon (CCW). The trial court, which conducted a bench trial in this case, sentenced him to three years' probation with the first year in jail. We affirm.

I. Basic Facts And Procedural History

The prosecutor charged Jones with CCW for an incident that occurred on August 22, 2000. At trial, Frederick Abrams, a police officer, testified that he "received information of a narcotics complaint by Sgt. Fluker." As a result, he went to 12247 Corbett Street in Detroit around 10:00 p.m. on August 22, 2000. Officer Abrams said he was in plain clothes in a semi-marked vehicle. There, he "observed Mr. Jones standing in the street, flagging vehicles." Officer Abrams said that, in his experience, this conduct was common in narcotics trafficking. He approached Jones on foot with "my badge hanging from my shirt" and Jones "started to walk away." Officer Abrams identified himself as a police officer and "called for him to stop." Officer Abrams said that Jones then pulled out a blue steel revolver from his "waistband area," dropped it to the ground, and continued to walk away from him. According to Officer Abrams, the weapon had not been visible earlier. Officer Abrams detained Jones and seized the gun. Jones admitted that he did not have a permit for the weapon.

William Carter, Officer Abrams' partner, testified that they were on routine patrol when they saw Jones "in the street, impeding vehicular traffic." Officer Carter suspected "that maybe he was selling narcotics. But I approached to investigate for impeding vehicular traffic. I was going to advise him at the time." Officer Carter said that he and Officer Abrams approached Jones with their badges displayed and identified themselves as police officers. Officer Carter then saw Jones remove a handgun from his waistband and drop it on the ground. Officer Carter

detained Jones and Officer Abrams picked up the gun. Officer Carter said they never entered a home.

Jones testified that he was involved with four police officers on the night in question. He said he was at his mother's house and was using the bathroom when his sister came to the door and said, "The narco's coming." Jones stepped out of the bathroom and the officers were "standing right there. And he asked me my name. I told him my name. They grabbed me and just searched me." After searching Jones, the officers reportedly escorted him to the front porch and had him sit. Then they took his keys from his pocket and, while one officer remained with him on the porch, the other three searched his car without consent. He told the officers he had a gun in the trunk of his car. Jones, however, denied flagging cars, having a gun on his person, and dropping a gun on the ground.

After hearing the testimony, the trial court announced its finding on the record:

There's a gun that was found out there on the street. The officers picked it up and arrested the person that they saw drop it.

I don't even understand this stuff about going into a house, because there was no reason. Why would they pick out any house; why would they pick out this particular house?

They didn't even know this defendant here. And why would they plant a gun on him?

I accept the officers['] story, beyond a reasonable doubt. They're telling the truth.

The trial court then found defendant guilty as charged.

II. Standard Of Review

Jones' sole claim on appeal is that the evidence was insufficient to sustain the verdict because the prosecutor never introduced the gun into evidence. Review de novo is appropriate for this issue.¹

III. CCW

"The evidence in a bench trial is sufficient if, when viewed in the light most favorable to the prosecutor, a rational factfinder could determine that each element of the crime had been

¹ See *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39 (2002).

proved beyond a reasonable doubt.”² Circumstantial evidence and the reasonable inferences that can be drawn from it are sufficient to prove the elements of a crime.³

CCW “requires proof that an accused carried a weapon and that it was concealed on or about his person.”⁴ The weapon need not be absolutely hidden to be “concealed;” all that is required is that it is “not readily observable by persons in the ordinary and usual associations of life.”⁵ Jones suggests that the evidence was insufficient because the officers did not introduce into evidence the gun itself. He also suggests that the officers found the gun in his car, not on his person, which failed to satisfy CCW’s carrying element. However, the police officers plainly testified that they saw Jones take a gun from his waistband, where he had it concealed.⁶ The trial court rejected the contrary defense theory because, it found, Jones was not a credible witness. The trial court was entitled to weigh the evidence in this way.⁷ Thus, in accepting the officer’s testimony, the evidence was sufficient to prove the crime beyond a reasonable doubt when viewing the evidence in the light most favorable to the prosecutor.

Affirmed.

/s/ William C. Whitbeck

/s/ David H. Sawyer

/s/ Kirsten Frank Kelly

² *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001).

³ *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

⁴ *People v Shelton*, 93 Mich App 782, 785; 286 NW2d 922 (1979).

⁵ *People v Jackson*, 43 Mich App 569, 571; 204 NW2d 367 (1972).

⁶ Cf. *People v Hayden*, 132 Mich App 273, 296; 348 NW2d 672 (1984).

⁷ See *People v Howard Johnson*, 30 Mich App 262, 263; 186 NW2d 24 (1971).