

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARWIN MCHENRY,

Defendant-Appellant.

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UNPUBLISHED

September 20, 2002

No. 233762

Wayne Circuit Court

LC No. 00-007304-01

Before: Smolenski, P.J., and Talbot and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction for carrying a concealed weapon, MCL 750.227(2). Defendant was sentenced to two years' probation. We affirm.

Defendant argues that the prosecution presented insufficient evidence to support his conviction for carrying a concealed weapon. When reviewing a claim of insufficient evidence, this Court views the evidence in a 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 Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999), quoting *People v Wolfe*, 440 Mich 508, 516 n 6; 489 NW2d 748, amended 441 Mich 1201 (1992).

MCL 750.227(2) provides, in pertinent part:

A person shall not carry a pistol concealed on or about his or her person, . . . except in his or her dwelling house, place of business, or on other land possessed by the person . . . .

“The purpose of the exemptions [listed in MCL 750.227] was to allow persons to defend those areas in which they have a possessory interest.” *People v Clark*, 21 Mich App 712, 716; 176 NW2d 427 (1970). “In order to qualify for the dwelling house exception, the defendant must present evidence that the location where the concealed [weapon] was carried was defendant’s dwelling house.” *People v Pasha*, 466 Mich 378, 382-383; 645 NW2d 275 (2002).

Defendant asserts that the house where he was carrying the gun was his “dwelling house,” and therefore, his conviction for carrying a concealed weapon should be reversed. The “dwelling house” exception applies “regardless of the use to which the premises are put.” *People v Gatt*, 77 Mich App 310, 312; 258 NW2d 212 (1977). Therefore, the fact that defendant

was allegedly engaged in drug transactions at 6023 Pennsylvania Avenue does not exempt him from the “dwelling house” exception. Defendant has the burden of proving that 6023 Pennsylvania Avenue is his “dwelling house.” MCL 776.20. To qualify for the “dwelling house” exception, defendant must prove that he had a possessory interest in 6023 Pennsylvania Avenue. *Pasha, supra* at 382-383; *People v Jiminez*, 27 Mich App 633, 636; 183 NW2d 853 (1970); *Clark, supra* at 716.

A rational factfinder could find that defendant did not produce sufficient evidence to prove that he had a possessory interest in 6023 Pennsylvania Avenue. The evidence regarding whether 6023 Pennsylvania Avenue is defendant’s “dwelling house” is conflicting. Defendant produced two witnesses, Tyree Harris and Earl Lewis, who testified that he stayed at 6023 Pennsylvania Avenue and one witness, Allean Stamps, who testified that he lived there. However, Harris admitted, “I know he stayed there. I don’t know if it’s his house.” Also, Stamps initially testified that her granddaughter lived in the house alone and then stated that defendant lived with her. Further, although defendant produced two witnesses who testified that keys to 6023 Pennsylvania Avenue were taken from defendant by police, one officer testified that he did not take keys from defendant. Defendant’s conviction rested on the trial court’s determination of the credibility of defendant’s witnesses. Questions regarding the credibility of the witnesses are for the trier of fact. *People v Givans*, 227 Mich App 113, 124; 575 NW2d 84 (1997). The trial court found that Lewis is “an out and out liar,” and that Harris “doesn’t really know if [defendant] lives there . . . .” Finally, the court found that, according to Stamps’ testimony, the owner of the house lives alone. As a result of the trial court’s assessment of the credibility of defendant’s witnesses, the trial court concluded that the evidence did not support a finding that 6023 Pennsylvania was defendant’s “dwelling house.” MCL 750.227. We conclude that the evidence was sufficient to support the trial court’s findings.

Affirmed.

/s/ Michael R. Smolenski

/s/ Michael J. Talbot

/s/ Kurtis T. Wilder