STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL PAGE,

Defendant-Appellant.

UNPUBLISHED
February 5, 2004

No. 241598
Wayne Circuit Court
LC No. 01-008316-01

Before: Schuette, P.J., and Murphy and Bandstra, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of carjacking, MCL 750.529a, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was subsequently sentenced to serve a term of eight to fifteen years' imprisonment for the carjacking conviction, to be preceded by the mandatory two-year term for his conviction of felony-firearm. Defendant appeals as of right. We affirm.

This case arises from the theft of a pickup truck from a Detroit-area carwash. At trial, an employee of the carwash testified that after cleaning the truck he parked the vehicle at the front of the carwash then placed the keys on a shelf inside the office to await the return of the vehicle's owner. A short time later, he observed defendant and another individual entering the vehicle from the driver's side door. When the employee approached the truck to inquire as to why the two men, neither of whom owned the vehicle, were inside the truck, defendant displayed a handgun and told the employee to "Get back." Defendant then left the carwash in the truck.

On appeal, defendant first argues that there was insufficient evidence to support his carjacking conviction. We disagree. "When reviewing a claim of insufficient evidence following a bench trial, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995).

To prove carjacking, the prosecution must establish: (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 another

person in fear. MCL 750.529a; *People v Green*, 228 Mich App 684, 694; 580 NW2d 444 (1998).

Defendant argues that he did not take a motor vehicle "from another person, in the presence of that person," MCL 750.529a, because the vehicle's owner was not present at the time the vehicle was taken, and the carwash employee had placed the keys to the vehicle on a shelf, from which either defendant or his accomplice presumably took them. We conclude, however, that the prosecution presented sufficient evidence that the truck was taken "from" and "in the presence of" the carwash employee, within the meaning of MCL 750.529a.

For purposes of the carjacking statute, "a thing is in the presence of a person if it is so within the person's 'reach, inspection, observation or control, that he could, if not overcome by violence or prevented by fear, retain his possession of it.'" *Green*, *supra* at 695, quoting *People v Raper*, 222 Mich App 475, 482; 563 NW2d 709 (1997) (Citations omitted). Here, the prosecution presented uncontroverted evidence that the truck was within the employee's "reach, inspection, observation or control," and would have remained so if not for defendant having brandished a firearm while ordering the employee to "Get back." The employee expressly testified at trial that upon observing defendant and his accomplice enter the truck, he approached the vehicle and opened the driver's side door to inquire as to why the two were inside the vehicle left in his care by its owner, but backed away from the truck and allowed it to be taken "because [defendant] had a gun."

Defendant appears to further argue that, even if the vehicle was taken "in the presence" of the employee, that fact is irrelevant because the employee did not have possession of the vehicle at the time it was taken by defendant. Defendant does not dispute that the vehicle was intentionally left by its owner in possession of the carwash and its employees. He argues, however, that the employee relinquished that possession when he placed the keys to the vehicle on a shelf inside the carwash. However, defendant cites no authority for the proposition that one must maintain the keys to a vehicle on his person in order to retain "possession" of the vehicle. We agree with the trial court that the employee, who had been given custody of the vehicle by its owner, was in constructive possession of the truck regardless of whether he maintained the keys to the vehicle on his person. See, e.g., *People v Wolfe*, 440 Mich 508, 520-522; 489 NW2d 748 (1992) (constructive possession exists when a person has the right to exercise dominion and control over the object in question).

Accordingly, we find that the evidence presented by the prosecutor was sufficient to justify a rational trier of fact in finding beyond a reasonable doubt that defendant "[took] a motor vehicle . . . from another person, in the presence of that person." MCL 750.529a. Defendant does not challenge the sufficiency of the evidence regarding whether he accomplished this "by threat of force or violence, or by putting in fear." Viewing the evidence in the light most favorable to the prosecution, there was sufficient evidence to support defendant's carjacking conviction.

Defendant also argues that his carjacking conviction was against the great weight of evidence. Again, we disagree.

A verdict is against the great weight of the evidence if the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *People v Lemmon,* 456 Mich 625, 642; 576 NW2d 129 (1998). We find no such inequity here.

At trial the carwash employee expressly identified defendant, whom he previously knew, as the person who took the vehicle in question after brandishing a gun. The owner of the vehicle also identified defendant as the one seen by him driving the truck out of the carwash, and the police officer who arrested defendant identified him as having been inside the vehicle during the pursuit from the carwash. The officer also testified that after the pursuit ended, he found a gun on the ground next to the driver's side door of the vehicle. The gun matched the description of the one that the carwash employee stated defendant pointed at him immediately before driving off the carwash premises in the vehicle.

Defendant called no witnesses at trial and did not controvert the evidence that he was at the carwash on the day in question, or that he pointed at gun at the employee and told him to get back before driving the vehicle from the carwash. On cross-examination, defendant elicited no evidence that the prosecution witnesses' testimony was not credible. Rather, his defense appeared to center on an attempt to show that, because the carwash employee had placed the keys to the vehicle on a shelf, the employee was not in "possession" of the vehicle at the time defendant drove off. Given the above, the evidence cannot reasonably be said to preponderate so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *Lemmon, supra*.

We affirm.

/s/ Bill Schuette
/s/ William B. Murphy
/s/ Richard A. Bandstra