

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY DENNIS O'REILLY,

Defendant-Appellant.

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UNPUBLISHED

June 15, 2004

No. 247047

Oakland Circuit Court

LC No. 2001-179345-FH

Before: Smolenski, P.J., and White and Kelly, JJ.

MEMORANDUM.

Defendant appeals as of right his jury trial convictions of carrying a concealed weapon, MCL 750.227, third-degree fleeing and eluding, MCL 257.602a(3), and operating a vehicle with license suspended, MCL 257.904(1)(a). Defendant was sentenced to thirty-two days in jail,<sup>1</sup> including credit for time already served, and eighteen months' probation. We affirm.

On appeal, defendant contends that there was insufficient evidence to support his conviction of carrying a concealed weapon. Defendant claims that the trial testimony does not prove the essential elements of the crime and does not support a finding that he had either knowledge or possession of the gun. We disagree. In reviewing the sufficiency of evidence in a criminal case, we view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the elements of the crime were proven beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000).

The elements of carrying a concealed weapon include proof that defendant carried a weapon and that the weapon was concealed on or about his person. *People v Shelton*, 93 Mich App 782, 785; 286 NW2d 922 (1979). Because it is a general intent crime, the prosecution need only prove that defendant intended to do the illegal act of knowingly carrying a weapon on his person. *People v Combs*, 160 Mich App 666, 673; 408 NW2d 420 (1987).

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<sup>1</sup> Although the trial court stated at sentencing that it was sentencing defendant to forty-two days in jail, the Judgment of Sentence reflects a sentence of thirty-two days in jail.

During the trial, the prosecution presented evidence to prove that defendant was carrying a concealed weapon on his person for which he had no license. Two state troopers testified that, as a result of a search of defendant's person subsequent to his arrest, a pistol was found concealed in defendant's right vest pocket. They also testified that defendant made a statement immediately after the pistol was found on his person that he had fled from the police because he did not want to get caught with the gun his "boy" had given him. Further, defendant did not establish that he had a license to carry a concealed weapon. Defendant refuted the officers' version of events.

Although there was contradictory testimony regarding the presence of a weapon, it is for the jury, not this Court, to determine the weight to be given to the evidence presented and the credibility of each witness. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1201 (1992). Accordingly, we conclude that, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could find that defendant was guilty of carrying a concealed weapon beyond a reasonable doubt.

Affirmed.

/s/ Michael R. Smolenski

/s/ Helene N. White

/s/ Kirsten Frank Kelly