

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

PAUL EMERSON,

Defendant-Appellee.

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UNPUBLISHED

March 20, 2007

No. 266047

Wayne Circuit Court

LC No. 05-001079-01

Before: O’Connell, P.J., and Saad and Talbot, JJ.

PER CURIAM.

Defendant pleaded guilty to carrying a concealed weapon in a vehicle, MCL 750.227, and the trial court sentenced him to three months in jail, or, in the alternative, an \$800 fine. Thereafter, defendant filed a motion to withdraw his guilty plea and the trial court granted the motion. The trial court then granted defendant’s motion to dismiss the case. The prosecutor appeals, and we reverse and remand for further proceedings.

I. Facts

Testimony from defendant’s preliminary examination shows that defendant drove his vehicle from his home to his place of business with a loaded pistol in the front console. A Federal Bureau of Investigation agent saw defendant pull into the parking lot of the business because the agents were waiting to execute a search warrant of defendant’s vehicle and business regarding another matter. After the agents found the loaded gun, defendant admitted that he had driven from his home to the business with the loaded pistol in his vehicle. Defendant had applied for, but was denied a permit to carry a concealed weapon. Accordingly, defendant was not authorized to carry a concealed weapon in his vehicle.<sup>1</sup>

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<sup>1</sup> Had defendant held a license to carry a concealed pistol, he would be authorized to carry it “in a vehicle, whether concealed or not concealed, anywhere in this state,” subject to various exceptions. MCL 28.425c(2)(b). Further, the prohibition under MCL 750.227(2) does not apply “[t]o a person holding a valid license to carry a pistol concealed upon his or her person issued by his or her state of residence except where the pistol is carried in nonconformance with a restriction appearing on the license.” MCL 750.231a(1)(a).

Defendant was charged with carrying a concealed weapon pursuant to MCL 750.227(2), which states, in relevant part:

(2) A person shall not carry a pistol concealed on or about his or her person, or, whether concealed or otherwise, in a vehicle operated or occupied by the person, except in his or her dwelling house, place of business, or on other land possessed by the person, *without a license to carry the pistol as provided by law*. . . (Emphasis added.)

Defendant filed a motion to dismiss and argued that the statute contains an exemption for those who carry a pistol in a vehicle at their place of business or on land they possess. Defendant maintained that the exemption applies because his pistol was in his unoccupied vehicle parked in the lot of his leased business premises. The trial court ultimately agreed and dismissed the case.

## II. Analysis

The prosecution contends that the trial court erred because the magistrate properly bound over defendant for trial and the trial court erroneously permitted defendant the protection of the exemption in MCL 750.227(2). We agree.<sup>2</sup>

The prosecution asserts that the correct inquiry is not whether defendant lawfully possessed the gun at the time of the search, but whether the prosecution proved that defendant, at some point, possessed the weapon in a motor vehicle on land not possessed by him. The prosecutor maintains that he proved this at the preliminary examination when he elicited testimony from an agent who stated that defendant admitted he drove his vehicle from his home to his clinic and he was aware that the gun was in the vehicle. Also, testimony established that the agents saw defendant drive his vehicle into the parking lot, presumably from the road.

To establish the offense of carrying a weapon in a vehicle, the prosecution must show: (1) the presence of a weapon in a vehicle operated or occupied by the defendant, (2) that the defendant knew or was aware of the presence of the weapon, and (3) that the defendant was carrying the weapon. *People v Nimeth*, 236 Mich App 616, 622; 601 NW2d 393 (1999). A defendant is deemed to “carry” the pistol if it is readily accessible to him. *Nimeth, supra* at 619-620.

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<sup>2</sup> A magistrate’s ruling that alleged conduct falls within the scope of a criminal law is a question of law which is reviewed de novo for error, while a decision to bind over a defendant based on the factual sufficiency of the evidence is reviewed for an abuse of discretion. *People v Schaefer*, 473 Mich 418, 427; 703 NW2d 774 (2005), mod on other grounds *People v Derror*, 475 Mich 316, 320 (2006). This Court reviews a trial court’s ruling regarding a motion to dismiss for an abuse of discretion. *People v Jones*, 252 Mich App 1, 4; 650 NW2d 717 (2002). An abuse of discretion standard acknowledges that there will be circumstances in which there will no single correct outcome; rather, there will be more than one reasonable and principled outcome. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). When the trial court selects one of these principled outcomes, it has not abused its discretion. *Id.*

The prosecution established the elements of the offense by showing that defendant drove from his home to his clinic with knowledge that there was a pistol in the console of his vehicle. The fact that the agents did not witness defendant driving from his home to his place of business does not mean that no crime was committed. It is more than reasonable to assume that defendant pulled in to the parking lot from the road, and he essentially admitted as much when he disclosed that he drove from his house to the business. There is no requirement that a police officer personally witness the crime in order for there to be probable cause to bind over a defendant. Defendant's statement, coupled with the agent's testimony that he saw defendant pull into the parking lot, were sufficient to lead the magistrate to conclude that there was probable cause to believe that defendant violated MCL 750.227. *People v Glass (After Remand)*, 464 Mich 266, 277; 627 NW2d 261 (2001); *People v McGee*, 258 Mich App 683, 696; 672 NW2d 191 (2003).

Defendant argues, erroneously, that the exemption allowing a business owner to carry a pistol on his business premises or on other land that he possesses implicitly authorized him to do what was necessary to bring the gun to the premises. Again, however, defendant violated the plain language of MCL 750.227(2) by driving on the public roads with a pistol in the console of his car. MCL 750.231a provides that MCL 750.227(2) does not apply "to a person while transporting a pistol for a lawful purpose." And, this may include transporting a pistol to the person's place of business. Yet, for the exception to apply, the pistol must be "unloaded in a closed case designed for the storage of firearms in a vehicle that does not have a trunk and is not readily accessible to the occupants of the vehicle."<sup>3</sup> MCL 750.231a(2)(b)(ii); MCL 750.231a(1)(e). Here, defendant's pistol was loaded, not in a closed case, and readily accessible to him in the front console of his vehicle. In delineating how a weapon may be transported, the Legislature sought to protect those in and outside the vehicle from the dangers associated with loaded firearms. *People v Quinn*, 440 Mich 178, 194; 487 NW2d 194 (1992). Therefore, defendant's argument that he had a lawful purpose for driving with a pistol, is unavailing.

Defendant further avers that the corpus delicti rule precludes the prosecution from using against him his statement that he drove from his home with the gun in his car. The charge against defendant is not barred by the corpus delicti rule because there is independent evidence of defendant's guilt. One of the agents who executed the search warrant observed defendant pull into the parking lot of the business, presumably from the road. Also, the search of the car revealed a loaded pistol in the front console. Thus, there was independent evidence tending to show that defendant committed the offense.

Defendant also argues that the charging documents involved in his case were defective. Specifically, defendant maintains that, because the complaint, warrant, and information all state that the place of offense is defendant's business, the prosecution is precluded from charging defendant with a crime that allegedly occurred on the road from defendant's home to his business. To the extent that this variance constitutes a defect, it is not so meaningful as to warrant dismissal of the case. The complaint, warrant, and information state, "[defendant] did carry a dangerous weapon, to wit: handgun, whether concealed or otherwise in a vehicle operated or occupied by said defendant, to wit: 1999 Chevrolet Tahoe; contrary to MCL 750.227." Each

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<sup>3</sup> Defendant's vehicle, being a 1999 Chevrolet Tahoe, does not have a trunk.

document further states the date of the offense and the city and county where it occurred. For these reasons, the factual allegations in the information and complaint were clearly sufficient because they adequately informed defendant of the substance of the accusations. *People v Higuera*, 244 Mich App 429, 447-448; 625 NW2d 444 (2001); MCR 6.101.

Reversed and remanded further proceedings. We do not retain jurisdiction.

/s/ Peter D. O'Connell  
/s/ Henry William Saad  
/s/ Michael J. Talbot