

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES TRAMINE BOONE,

Defendant-Appellant.

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UNPUBLISHED

January 29, 2008

No. 275087

Wayne Circuit Court

LC No. 06-009177-01

Before: Bandstra, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for felon in possession of a firearm, MCL 750.224f, carrying a concealed weapon in a motor vehicle, MCL 750.227, receiving or concealing a stolen motor vehicle, MCL 750.535(7), and possession of a firearm during the commission of a felony, MCL 750.227b. Because sufficient evidence supported the elements of defendant's convictions, and, the trial court properly excluded defendant's prior consistent statement to police, we affirm.

On appeal, defendant first claims there was insufficient evidence to establish his guilt beyond a reasonable doubt on all of the conviction offenses. In a challenge to the sufficiency of evidence, we review the evidence de novo, in a light most favorable to the prosecution, to ascertain whether the prosecution has proved all the elements of each charge beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 513-515; 489 NW2d 748, amended on other grounds 441 Mich 1201 (1992).

The elements of receiving or concealing a stolen motor vehicle are: (1) the vehicle was stolen (2) the defendant bought, received, possessed concealed or aided in the concealment of the vehicle; (3) knowing that it was stolen; and (4) the property is identified as previously stolen. MCL 750.535(7); *People v Allay*, 171 Mich App 602, 608; 430 NW2d 794 (1988); *People v Toodle*, 155 Mich App 539, 552-554; 400 NW2d 670 (1986). In the instant case, defendant confessed to Sergeant Vernal Newson that he drove the stolen car with knowledge that it was stolen. The owner of the car testified that it was stolen from him and that he got it back after defendant was found in possession of it and was arrested. Defendant was arrested inside the car with its keys attached to a key ring that also held his school identity card. Viewed in a light most favorable to the prosecution, the evidence was more than sufficient to support defendant's conviction of receiving or concealing a stolen motor vehicle.

The elements of being a felon in possession of a firearm are: (1) a previous conviction as a felon in one of the enumerated felonies, and (2) possession of a firearm. MCL 750.224f(2); *People v Perkins*, 473 Mich 626, 629; 703 NW2d 448 (2005). The defense stipulated that defendant had been convicted of one of the enumerated felonies and that he had not undertaken the required steps for rehabilitation under the statute. Officers Sean Bell and Shannon Robinson testified that defendant was asleep in the back seat of the stolen car with a .380 handgun resting on his chest, with his hand either close to or actually on the gun. The fact that fingerprint analysis was not done is not fatal to the prosecution's case because the officers' testimony directly placed defendant in possession of the gun. There was sufficient evidence of possession to sustain defendant's conviction.

The elements of carrying a concealed weapon in a motor vehicle are: (1) the presence of a weapon in a vehicle operated or occupied by the defendant, (2) the defendant's knowledge that the weapon is present, and (3) the "carrying" of a weapon. MCL 750.227(2); *People v Nimeth*, 236 Mich App 616, 622; 601 NW2d 393 (1999). The testimony of Officers Bell and Robinson showed that defendant was in the stolen car with the gun actually on his person. The jury could reasonably infer that defendant placed the gun there before falling asleep. Further, the jury might also infer guilty knowledge from defendant's flight from uniformed police officers. *People v Cammarata*, 257 Mich 60, 66; 240 NW 14 (1932); *People v Goodin*, 257 Mich App 425, 432-433; 668 NW2d 392 (2003). Here, too, proofs were sufficient to support the elements of carrying a concealed weapon in a motor vehicle.

Finally, the elements of felony-firearm are (1) possession of a firearm (2) while in the commission or attempted commission of another felony. MCL 750.227b; *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000). There was ample evidence that defendant was committing another felony while in possession of the handgun. The evidence that he actually possessed the gun was overwhelming, even absent fingerprint analysis. While it was indeed important to the defense that the gun be examined for fingerprints, fingerprinting is not an element of any crime for which defendant stands convicted. Failure of the police to complete a fingerprint analysis of the handgun in defendant's possession was inconsequential considering the facts of this case. Moreover, the prosecutor was not required to prove that the handgun was operational in any of the weapons counts. *People v Peals*, 476 Mich 636, 650-652; 720 NW2d 196 (2006).

Defendant also claims the trial court abused its discretion in refusing to admit into evidence the statements he made to a detective after his arrest. Those statements were generally exculpatory in nature and consistent with his trial testimony, but differed substantially from a later statement to another police officer that was read into evidence. Defendant claims the statements were very relevant and their exclusion from trial caused manifest injustice. We review the decision of a trial judge to admit or deny the admission of evidence for an abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). When the decision involves a preliminary issue of law, review is de novo. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999).

MRE 801(d)(1)(B) permits the admission of some prior extra-judicial statements that are consistent with the testimony of a witness at trial if the statement meets several prerequisites. The proponent of the statement must show: (1) the declarant testified at trial and was subject to cross-examination; (2) there must be an express or implied charge of recent fabrication or

improper influence or motive of the declarant's testimony; (3) the proponent must offer a prior consistent statement that is congruent with the testimony offered at trial; and (4) the extra-judicial statement was made before any motive to falsify arose. If these prerequisites exist, the extra-judicial statements are not hearsay. *People v Jones*, 240 Mich App 704, 706; 613 NW2d 411 (2000). In this case, defendant's statements to Detective Sanders were made after he was arrested, i.e., when a motive to falsify existed. The trial court properly ruled that the statements were not admissible because they were self-serving hearsay. *People v Lewis*, 160 Mich App 20, 29-30; 408 NW2d 94 (1987); *People v McCray*, 245 Mich App 631, 642; 630 NW2d 633 (2001).

Affirmed.

/s/ Richard A. Bandstra

/s/ Pat M. Donofrio

/s/ Deborah A. Servitto