

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TONY DAVELL WILLIAMS,

Defendant-Appellant.

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UNPUBLISHED

May 13, 2008

No. 275986

Wayne Circuit Court

LC No. 06-008902-01

Before: Donofrio, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of carrying a concealed weapon, MCL 750.227. Because there was sufficient evidence for a rational trier of fact to find guilt beyond a reasonable doubt, we affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole issue on appeal is that there was insufficient evidence to support his conviction of carrying a concealed weapon. When reviewing a claim of insufficient evidence, this Court reviews the record de novo. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). The evidence is viewed in the light most favorable to the prosecutor, and this Court determines whether a rational trier of fact could find that the essential elements of the crime charged were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

Michigan State Troopers observed defendant riding in the front passenger seat of a vehicle, without wearing a seatbelt. There were three men in the vehicle: defendant, the driver, and the rear passenger. After pulling the vehicle over, one of the troopers smelled marijuana coming from the vehicle and observed a hollowed out cigar wrapper, which he knew from experience was used to fill with marijuana. The troopers asked all three men to exit the vehicle and conducted a sweep of the vehicle for weapons. Police found a handgun underneath defendant's seat.

In a statement made voluntarily by defendant, he indicated that he did not carry a gun for violence, but only for protection. At trial, he testified that he did not know about the presence of the gun under his seat, and that in his initial statement he was referring to a prior incident where he possessed a gun for protection, not the incident at issue. He further testified that he felt safer around people who carry weapons and knew the driver of the vehicle had a gun, which was the

reason he felt he did not need his own gun for protection at that time. Defense counsel presented a video, purporting to show that it was not possible for defendant to fit the gun underneath his seat. The prosecutor presented evidence that the gun used in the video was larger than the actual gun found under defendant's seat, and that it was possible for defendant to put the gun under his seat.

To establish the crime of carrying a concealed weapon, the prosecutor must show the following elements: (1) the weapon was present in a vehicle operated or occupied by defendant, (2) defendant was aware that the weapon was present in the vehicle, and (3) defendant was "carrying" the weapon. *People v Nimeth*, 236 Mich App 616, 622; 601 NW2d 393 (1999). These elements may be met by drawing reasonable inferences from circumstantial evidence. *Id.* Furthermore, it is for the trier of fact to determine what inferences can fairly be drawn from the evidence presented. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

The word "carry" encompasses actual, as well as constructive, possession of a weapon. *People v Adams*, 173 Mich App 60, 62-63; 433 NW2d 333 (1988). It includes situations where a weapon is located in close proximity to the defendant, and where a defendant would have convenient and prompt access to the weapon if needed for a violent purpose. *Id.* The main purpose of the carrying a concealed weapon statute is "to protect quarrelling persons from being injured by an adversary who might suddenly draw and use a concealed weapon without notice." *People v Emery*, 150 Mich App 657, 663; 389 NW2d 472 (1986).

Defendant indicated in his statement that he carries a weapon for protection. He attempted to contradict this statement at trial by testifying that he was referring to past occasions when he had carried a weapon. Regardless of which incident defendant was referring to in his statement, he expressed that he preferred being around individuals who had weapons. In fact, he was aware that the driver of the vehicle had a gun on him. In addition, the prosecutor presented evidence showing that the troopers were able to slide an identical gun under the front seat of an identical vehicle. The trial judge believed that if defendant himself did not place the gun under his seat, he gave the gun to another person in the vehicle who must have put it under the seat, believing that this would mean he was not actually "carrying" it.

The fact that the back seat passenger may have been just as close to the gun as defendant was does not negate the additional evidence presented. *Emery, supra* at 668. The gun was located in close proximity to defendant and, presumably, could be accessed quickly by him or the back seat passenger if a confrontation were to arise. The gun was found directly under defendant's seat, it was physically possible for defendant to slide a gun under his seat, defendant admitted carrying a gun for protection, and defendant knew a gun was in the vehicle.

Carrying a concealed weapon is a general intent crime, and the prosecutor is only required to show that defendant knowingly carried a weapon on himself or in the vehicle. *People v Combs*, 160 Mich App 666, 673; 408 NW2d 420 (1987). If defendant did not actually "carry" the gun, it is reasonable to infer, based on the evidence presented, that defendant knowingly participated in keeping the gun in the vehicle. When viewing the evidence in the light most favorable to the prosecutor, we conclude that defendant knowingly carried a weapon in the vehicle, without a license to do so, and thus the elements of the crime were met. This Court should not interfere with the trial judge's determination of the weight of the evidence or the credibility of the witnesses. *People v Passage*, 277 Mich App 175, 177; 743 NW2d 746

(2007). There was sufficient evidence for a rational trier of fact to find defendant guilty beyond a reasonable doubt of carrying a concealed weapon.

Affirmed.

/s/ Pat M. Donofrio

/s/ David H. Sawyer

/s/ William B. Murphy