

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM EDWARD MOORE,

Defendant-Appellant.

UNPUBLISHED

September 29, 2009

No. 283790

Wayne Circuit Court

LC No. 06-010056-FC

Before: Saad, C.J., and Whitbeck and Zahra, JJ.

PER CURIAM.

Defendant William Moore appeals by right his bench trial conviction of carrying a concealed weapon in a vehicle.¹ The trial court sentenced Moore to one year and six months' probation. We affirm.

I. Basic Facts And Procedural History

On the evening of August 18, 2006, the complainant, Keir Young went to the bar with his wife, Joslynn Charley; his aunt, Venice Beamon; Beamon's friend, Ross Jones; and Keir Young's cousin, Shantina Young. They rode together in Jones's van and arrived at the bar between 11:00 p.m. and midnight. Moore, who Beamon and Jones knew, was in the bar.

Sometime later, an altercation ensued between Keir Young and Moore. Keir Young claimed that Moore had made derogatory comments toward his wife. At some point during the altercation, Moore pulled out a stick from his truck. Although there was conflicting testimony regarding who the original aggressor was, the testimony established that Keir Young was able to wrestle the stick away from Moore and punched Moore at least once in the face. After that, Moore went back to his truck and left.

Keir Young went back to Jones's van and although there was conflicting testimony again about what happened at this point, it was established that Moore soon returned to the parking lot. Keir Young then got out of the van, and Moore got out of his truck. But this time, Moore was

¹ MCL 750.227.

armed with a gun. Keir Young ran around Moore's truck, and Moore started shooting. One of the shots hit Keir Young in the back. Keir Young fell to the ground, and Shantina Young then threw herself on top of Keir Young and said, "Don't kill my cousin." Moore then walked back to his truck.

Joslynn Charley called the police, and Moore was still there when the police arrived. The police placed Moore into custody, and Keir Young was taken to the hospital. Keir Young woke up in the hospital to discover that, as a result of the shot, he was paralyzed from under his ribs to his feet.

Following the parties' arguments, the trial court stated its findings of fact. Addressing the carrying a concealed weapon charge, the trial court stated:

Now, on Count II, it's not refuted that [Moore] had a gun with him in his car at least when he returned to the scene and used it. That's unlawful unless [Moore], of course, had a license to carry his gun in his car. The People are not obligated to prove the negative or to prove the absence of a license and this Court having heard nothing with respect to a CCW license, I find [Moore] guilty as charged in Count II, carrying a concealed weapon.

II. Shifting The Burden Of Proof

A. Standard Of Review

Moore contends that the trial court impermissibly shifted the burden of proof to him. Where the defendant did not preserve the issue by timely objection below, this Court reviews the matter for plain error.² We can decide questions of law on the facts presented.³

B. Legal Standards

MCL 750.227(2) prohibits a person from carrying a pistol "in a vehicle operated or occupied by the person . . . without a license to carry the pistol as provided by law[.]"

With respect to proving the elements of a carrying a concealed weapon offense, MCL 776.20 provides:

In a prosecution for the violation of any acts of the state relative to use, licensing and possession of pistols or firearms, the burden of establishing any exception, excuse, proviso or exemption contained in any such act shall be upon the defendant but this does not shift the burden of proof for the violation.

Commenting on MCL 776.20, the Supreme Court stated in *People v Henderson*:

² *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

³ *Parent v Parent*, 282 Mich App 152, 154; 762 NW2d 553 (2009).

Accordingly we hold that upon a showing that a defendant has carried a pistol in a vehicle operated or occupied by him, prima facie case of violation of the statute has been made out. Upon the establishment of such a prima facie case, the defendant has the burden of injecting the issue of license by offering some proof-not necessarily by official record-that he has been so licensed. The people thereupon are obliged to establish the contrary beyond a reasonable doubt.^[4]

C. Applying The Standards

The evidence at trial established that Moore pulled a pistol from his vehicle and discharged it in a parking lot. Pursuant to MCL 776.20, the holding of *Henderson*, and because the prosecutor made out a prima facie case that Moore carried a pistol in a vehicle that he operated and occupied, Moore then had the burden of presenting some proof that he had a license to carry the weapon. MCL 776.20 clearly provides that the burden of producing this evidence did not shift the burden of proof for the offense to Moore. Therefore, we find no error in the trial court's ruling.

Affirmed.

/s/ Henry William Saad
/s/ William C. Whitbeck
/s/ Brian K. Zahra

⁴ *People v Henderson*, 391 Mich 612, 616; 218 NW2d 2 (1974).