

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFREY JAMES WORDEN,

Defendant-Appellant.

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UNPUBLISHED  
October 17, 1997

No. 192112  
St. Clair Circuit Court  
LC No. 95-000601-FH

Before: Markman, P.J., and McDonald and Fitzgerald, JJ.

PER CURIAM.

Defendant was convicted by jury of carrying a weapon with unlawful intent, MCL 750.226; MSA 28.423, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to one year, six months to five years' imprisonment for the carrying a weapon with unlawful intent conviction, to be preceded by a consecutive sentence of two years' imprisonment for the felony-firearm conviction. We reverse defendant's convictions and remand for entry of directed verdicts of not guilty on both offenses.

Defendant argues that there was insufficient evidence to support his convictions and, accordingly, that the trial court erred by denying his motion for a directed verdict of acquittal. We agree. In reviewing the denial of a directed verdict motion, this Court views the evidence in a light most favorable to the prosecution to determine if the evidence was sufficient to permit a rational factfinder to find the essential elements of the crime proven beyond a reasonable doubt. *People v Partridge*, 211 Mich App 239, 240; 535 NW2d 251 (1995). To support a conviction of carrying a weapon with unlawful intent, the prosecutor must establish beyond a reasonable doubt that the defendant carried a firearm or dangerous weapon with the intent to unlawfully use the weapon against another person. *People v Harrington*, 194 Mich App 424, 428; 487 NW2d 479 (1992); see also *People v Jones*, 443 Mich 88, 102; 504 NW2d 158 (1993). The first element was established by defendant's statement to Deputy Timothy O'Boyle that defendant was carrying the gun at issue for his own safety. However, insufficient evidence was offered at trial to support the intent element.

In *People v Flinnon*, 78 Mich App 380, 383; 260 NW2d 106 (1977), the defendants were convicted of multiple offenses, including carrying a weapon with unlawful intent. The defendants had

robbed a gas station and, when stopped thereafter, two rifles were seized from their car. *Id.* at 383-384. The following remarks in that case are instructive:

There is insufficient evidence of the intent with which the rifles were carried. There is no evidence that the rifles were present during the robbery. That they were may be inferred from their presence at arrest, but any further inferences -- such as the rifles being loaded or the intent with which they were carried -- is unwarranted. It is not a question of whether defendants *might* have carried the rifles with the unlawful intent, but whether they in fact *did* have an unlawful intent. The argument that the rifles might have been used during the robbery or that the hesitation of one of the defendants upon exiting the vehicle shows the intent is mere speculation. Conviction under this statute must rest on proof of the intent with which the weapons were carried, not mere possibilities. The fact that loaded weapons were present in the passenger compartment of the vehicle does not prove the intent with which they were carried. [*Id.* at 385.]

The evidence of intent was similarly absent here. David Dean testified that when defendant and his wife approached in a car, he had a reasonable and honest belief that defendant was going to kill him. However, even if this belief was accurate, it cannot reasonably be viewed as establishing what defendant actually intended to do. There was also evidence that defendant told Deputy O'Boyle that he intended to confront Dean about a particular matter, but there was no testimony that defendant said he intended to confront Dean with the gun. Deputy O'Boyle testified that he saw defendant moving within the vehicle in a manner which one might surmise was consistent with trying to remove the gun from the briefcase in which it was found, but there was no evidence directly connecting that movement to the gun or the briefcase. It cannot reasonably be inferred that defendant intended to confront Dean with the gun merely because it was in the vehicle. That defendant *might have* intended to use the gun unlawfully against Dean is not enough to support a conviction for carrying a weapon with unlawful intent. The evidence presented at trial merely raised a possibility or allowed for conjecture that defendant may have intended to confront Dean with the gun. While circumstantial evidence and reasonable inferences that arise from the evidence may suffice to establish the elements of a crime, inferences may not be based on evidence that is uncertain, speculative, or that raises merely a conjecture or possibility. *People v Fisher*, 193 Mich App 284, 289; 483 NW2d 452 (1992). We conclude that there was insufficient evidence to support defendant's conviction of carrying a weapon with unlawful intent.

Given our conclusion that the evidence was insufficient to support the underlying charge of carrying a concealed weapon, it necessarily follows that the evidence was also insufficient to support the felony-firearm conviction. *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996) (a felony-firearm conviction requires proof that the defendant possessed a firearm during the commission or attempt to commit a felony).

In light of this resolution, it is unnecessary to reach the other issues raised in defendant's brief.

Reversed and remanded for entry of a directed verdict of not guilty on both charges. Jurisdiction is not retained.

/s/ Stephen J. Markman

/s/ Gary R. McDonald

/s/ E. Thomas Fitzgerald