STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DOUGLAS ALLAN POTILA,

Defendant-Appellant.

UNPUBLISHED
June 4, 1999

No. 201893
Marquette Circuit Court
LC No. 96-318460 FH

Before: Saad, P.J., and Hood and Gribbs, JJ.

PER CURIAM.

Defendant appeals by right from his conviction by jury of carrying a concealed weapon, MCL 750.227; MSA 28.424. The trial court sentenced him to eighteen months' probation, with one month to be served in jail. We affirm.

I

At trial, defendant presented the affirmative defense that he was carrying the weapon for hunting. Defendant claims that the prosecution failed to present sufficient evidence to disprove this affirmative defense to the charge of carrying a concealed weapon. In reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998).

The crime of carrying a concealed weapon, as applied to this case, has only one element: that defendant carried a pistol in a vehicle operated by him. *People v Henderson*, 391 Mich 612, 616; 218 NW2d 2 (1974); MCL 750.227; MSA 28.424. Defendant does not dispute that this element was satisfied; he freely admits that he was carrying a pistol while driving his car. Defendant argues, however, that he satisfied the elements of the hunting exception, which can be used to rebut a prima facie showing of a concealed weapons violation. The hunting exception is found in MCL 750.231a; MSA 28.428(1), which states, in part, as follows:

(1) Section 227 [footnote omitted] does not apply to any of the following:

* * *

> (d) To a person while carrying a pistol unloaded in a wrapper or container in the trunk of the person's vehicle, while in possession of a valid Michigan hunting license or proof of valid membership in an organization having pistol shooting range facilities, and while en route to or from a hunting or target shooting area.
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> * * *
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> (f) To a person while carrying an unloaded pistol in the passenger compartment of a vehicle which does not have a trunk, if the person is otherwise complying with the requirements of subdivision (d) . . . and the wrapper or container is not readily accessible to the occupants of the vehicle.

Defendant arguably presented enough evidence to put the affirmative defense of hunting into controversy. Defendant testified that he was an avid hunter, that he was planning to hunt on his way home from work on the day in question, and that he had a valid hunting license. He also claimed that he had an orange hunting jacket with him in the car and that the .25 caliber handgun was suitable for hunting rabbits. Defendant further testified that he felt his handgun was not readily accessible to him in his El Camino (a trunkless car) on the day in question.

Assuming that defendant presented sufficient evidence to put into controversy whether he met the hunting exception to the concealed weapons statute, the prosecution was then required to "disprov[e] the affirmative defense beyond a reasonable doubt." *People v Thompson*, 117 Mich App 522, 528; 324 NW2d 22 (1982). The prosecution did so, as evidenced by the following: (1) the police officers testified that defendant did not mention hunting during his discussions with the investigating officer, that he did not mention hunting when the investigating officer's partner asked him why he was carrying a gun, and that he told the investigating officer he had carried a gun ever since returning from Vietnam; (2) the investigating officer testified that the handgun was located immediately adjacent to defendant's passenger seat in a partially unzipped case that one did not have to further unzip in order to extract the gun; (3) the temperature was approximately eighteen degrees below zero that morning, and defendant had only cowboy boots with him; (4) defendant had no hunting hat with him; (5) at the preliminary examination, defendant did not mention having a hunting coat in his car and indicated that he would probably wear his flannel shirt while hunting; (6) a conservation officer with the Department of Natural Resources (DNR) testified that the handgun in question was not a hunting weapon and was designed for personal protection; (7) she also testified that it would be extremely difficult to shoot a rabbit with defendant's handgun and that in her eleven-year career with the DNR she had never seen anyone hunt with a similar gun; and (8) defendant's friend and brother-in-law indicated that they had never been rabbit hunting with defendant.

This evidence, taken as a whole, was sufficient for the jury to find beyond a reasonable doubt that defendant did not satisfy the elements of the hunting exception to the concealed weapons statute. Although some of the inculpatory testimony was contradicted by other testimony at trial, this Court will not disrupt the jury's resolution of credibility disputes when deciding a sufficiency of evidence issue. *People v DeLisle*, 202 Mich App 658, 660; 509 NW2d 885 (1993).

II

Next, defendant argues that the hunting exception in MCL 750.231a; MSA 28.428(1) is unconstitutionally vague because it fails to provide fair notice of the wrongful nature of one's conduct. Specifically, defendant argues that the phrase mandating that the weapon's container be "not readily accessible to the occupants of the vehicle" is subject to differing interpretations. We review de novo the claim that a statute is unconstitutionally vague. *People v Hubbard (After Remand)*, 217 Mich App 459, 484; 552 NW2d 493 (1996).

A statute may properly be held unconstitutional if it fails to "provide fair notice of the conduct proscribed." *People v Piper*, 223 Mich App 642, 645; 567 NW2d 483 (1997).

> To be constitutional, a contested statutory phrase must give persons of ordinary intelligence notice of the conduct that will subject them to criminal liability. [*People v Gregg*, 206 Mich App 208, 211; 520 NW2d 690 (1994).]

In determining whether the contested phrase provides fair notice, we give the words in the phrase their ordinary meanings. *Piper, supra* at 646. Where the statute itself does not define the words, we may consult dictionary definitions. *Indenbaum v Michigan Bd of Medicine*, 213 Mich App 263, 271; 539 NW2d 574 (1995). The words "not readily accessible" in § 750.231a are not defined in the statute, and therefore we will review dictionary definitions. The American Heritage Dictionary, New College Edition, p 1085, defines "readily" as "promptly" or "easily." On page 8, the dictionary defines "accessible" as "easily approached or entered" or "easily obtained." Thus, the relevant portion of the statute can be read as "and the wrapper or container is not easily obtainable by the occupants of the vehicle." This phrase is sufficiently precise to give persons of average intelligence notice of prohibited conduct, especially since the purpose of the concealed weapons statute—to prevent persons from suddenly ambushing others—is apparent from its wording. A person must merely ensure that someone cannot simply reach over and grab the container or the gun. Persons of ordinary intelligence can discern when something is or is not "easily obtainable" by occupants of a vehicle, and thus the phrase in question is not unconstitutionally vague. See *Gregg, supra* at 211.

III

Defendant contends that the trial court abused its discretion in allowing evidence of prior threatening statements defendant made toward police officers. The decision whether to admit evidence is left to the discretion of the trial court. *People v Hoffman*, 225 Mich App 103, 104; 570 NW2d 146 (1997). We will find an abuse of discretion if an unprejudiced person evaluating the facts on which the trial court acted could find no justification for the evidentiary ruling. *Id.*

Defendant objects to the following: (1) an officer's testimony that when police confronted defendant regarding an alleged junk ordinance violation, defendant responded that if "'[the officers came] back, [they had] better bring a lot of men and a lot of iron'" in order to fight; (2) two officers' testimony that after police confiscated defendant's handgun, defendant went to the Sheriff's Department

to apply for a concealed weapons permit and stated "'I guess I'm going to have to get a big gun to get my little gun back.'"

Defendant contends that the two statements in question should have been excluded under MRE 404, which prohibits the introduction of evidence of a person's character to prove that he or she acted in conformity with that character. Defendant's argument is without merit, since MRE 404 applies only to prior *acts* of a defendant, not to a defendant's prior *statements*. *People v Goddard*, 429 Mich 505, 518; 418 NW2d 881 (1988); *People v Rushlow*, 179 Mich App 172, 176; 445 NW2d 222 (1989), aff'd on other grounds 437 Mich 149 (1991). See *People v Milton*, 186 Mich App 574, 574; 465 NW2d 371 (1990) ("as a statement of a party-opponent, admissibility is determined by the statement's relevancy and by whether its probative value is outweighed by its possible prejudicial effect").

Defendant further argues that the statements were irrelevant. MRE 401 defines "relevant evidence" as:

> . . . evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Defendant's theory of the case was that he was carrying the handgun because he planned to go hunting on his way home from work. The prosecutor's theory, on the other hand, was that defendant carried a gun because he was a hostile person who did not like or trust police officers. The two statements in question are relevant to the prosecutor's theory—they tend to show defendant as a hostile person who threatens to use guns against police officers. A similar issue arose in *People v Miller (After Remand)*, 211 Mich App 30; 535 NW2d 518 (1995), involving a defendant charged with murdering his ex-girlfriend's boyfriend. The prosecutor introduced evidence that the defendant warned the girlfriend ten months before the murder that she should not see other men because he had "the ability and the capability and the mend where I will kill somebody." *Id.*, 38. The Court held that this statement was relevant because it "fit squarely within the stalker/obsessive theory urged by the prosecution and supported by overwhelming testimony." Similarly, evidence of defendant's threatening statements to police officers fits squarely with the prosecutor's theory that defendant carried the gun because he was hostile, not for hunting.

Defendant argues that any relevance of the statements was outweighed by the danger of unfair prejudice or confusion under MRE 403. We disagree. While the statements were prejudicial, it was not an abuse of discretion for the trial court to rule that their probative value outweighed their prejudicial effect. Moreover, defendant had the opportunity to refute the statements. He testified that he did not remember making either of the statements. Additionally, two police officers testified that when they pulled defendant over for speeding on a day other than the one in question, defendant was very cooperative and nonconfrontational, implying that defendant was not hostile toward police officers. Given that the statements in question were relevant to the prosecutor's theory of the case, and given that the jury received evidence that could have counteracted the effect of the statements, the trial court did not abuse its discretion in ruling that the statements were more probative than prejudicial.

Finally, defendant argues that the statements should have been excluded because the prosecutor provided defense counsel with inadequate notice that they would be introduced. This argument is unpersuasive. The advance notice provision of MRE 404(b)(2) is inapplicable because, as indicated above, MRE 404 itself is inapplicable. Furthermore, the prosecutor indicated that he learned of the "lots of men, lots of iron" statement on the day of trial and that he learned of the "big gun—little gun" statement on the day before trial. Thus, it was not an abuse of discretion for the trial court to rule that the late notice was excused.

Affirmed.

/s/ Henry William Saad
/s/ Harold Hood
/s/ Roman S. Gribbs