

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BLAKE E. JAMES,

Defendant-Appellant.

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UNPUBLISHED

March 8, 2002

No. 223012

Wayne Circuit Court

Criminal Division

LC No. 99-002230

Before: Owens, P.J., and Holbrook, Jr., and Gage, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of carrying a concealed weapon (CCW) in a motor vehicle, MCL 750.227. Defendant was sentenced to two years' probation. We affirm.

Defendant's sole argument on appeal is that he was denied a fair trial because the trial court permitted the prosecution to question defendant about a prior CCW arrest that did not result in a conviction. We disagree. A trial court's decision whether to admit evidence is reviewed for an abuse of discretion. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999).

Defendant was pulled over by the police for speeding and for making an improper lane change. Defendant had one passenger in the vehicle. One of the officers who pulled over defendant testified that as he walked toward the vehicle, the officer observed defendant reach over and throw a silver object in the vehicle's glove compartment. When the glove compartment was opened, the police found a silver semi-automatic handgun inside. The gun's magazine was found in the vehicle's center console. Defendant testified that he kept the gun and the magazine separated so that the weapon would not be readily accessible for use. Defendant argued that keeping the gun broken down in this manner meant that defendant was exempt from liability under the CCW statute.<sup>1</sup>

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<sup>1</sup> The jury was given the following instruction regarding the exemption argued by defendant:

A person may also carry a pistol in a vehicle, when moving goods from his home or place of business to another home or place of business of his.

(continued...)

At the close of direct examination, defendant testified as follows:

*Defense Counsel:* So when you're talking [with the passenger] about your understanding, is that exemption to the CCW requirement?

*Defendant:* Yes.

*Defense Counsel:* That you had read a brochure or whatever?

*Defendant:* Exactly.

*Defense Counsel:* That is what you were trying to live up to?

*Defendant:* Yes, I was. I'm law abiding citizen. I have no prior convictions, or felonies, or anything. I was trying to do everything law abiding.

In response to defendant's broad assertion that he did not have "*anything*" in his past that would undermine his contention that he was a law abiding citizen, the prosecution was permitted to question defendant about any prior arrests. However, the court instructed the prosecution that it could not go into the specifics of those arrests. The following exchange then took place:

*Prosecutor:* Mr. James, going back to law abiding citizen; have you ever been arrested for a felony?

*Defendant:* No. Arrested for a felony?

*Prosecutor:* Have you ever been arrested for a felony?

*Defendant:* No.

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*Prosecutor:* You say you never been arrested for a felony. Yet back on December 13th, 1992, you were arrested for the same charge, CCW, . . . correct?

*Defendant:* That's CCW.

*Prosecutor:* You just told me you never been arrested for a felony.

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(...continued)

However, the pistol must be unloaded, must be in a wrapper or container, in the trunk of the vehicle, and it must not be easily accessible to the people in the vehicle.

For a person who is in a vehicle which does not have a trunk, the pistol must be unloaded, in a passenger compartment of the vehicle, and be in a wrapper or container and it must not be easily accessible to the people in the vehicle.

*Defendant:* I misunderstood. I'm think you saying convicted OF a felony.

*Prosecutor:* But you understand now, correct?

*Defendant:* Yes, I was arrested.

*Prosecutor:* So you were arrested for the same type of offense, CCW and you were actually sentenced to something; what was that?

At this point, defendant again objected, arguing that the prosecution had gone beyond the guidelines set down by the court. After the jury was dismissed for the day, the court reiterated that the prosecution could not inquire about "any specifics of any crime or the explanation of anything further." At the end of this exchange, defense counsel agreed that the prosecution had the right to address the matter in a limited way due to defendant voluntarily interjecting the issue of his past criminal history.

The following day, the issue was again revisited. The court stated that because the prosecution had improperly questioned defendant about the nature of the prior CCW arrest, the court would give a limiting instruction if defendant requested one. Defendant never made such a request.

We see no error in the court's decision to allow the prosecution to inquire into defendant's past arrest record. When defendant voluntarily testified as to his criminal history, he left a false impression with the jury about that history. Accordingly, defendant not only put his character in issue, *People v Leonard*, 224 Mich App 569, 594; 569 NW2d 663 (1997), but he also opened the door to evidence to correct this false impression. As with any other witness, when a defendant gratuitously testifies about an irrelevant matter, the prosecution may impeach the defendant by showing his testimony was in error. It is the defendant in such a situation who has made the matter relevant, thereby entitling the prosecution to correct the false impression.

While the prosecution did go beyond the boundaries set by the trial court by asking whether defendant had a previous CCW arrest, defendant never requested a curative instruction on the issue, even though the court clearly indicated it would give one if so requested. Further, it was undisputed that defendant had an unwrapped gun in his glove compartment, within reach of him and his passenger, that he was not returning the gun from a place of repair or moving it with goods to his home or business, and that he did not have a concealed weapons permit. In light of this record, it is not more probable than not that the evidence of defendant's prior arrests contributed to the verdict. *Lukity, supra*.

Affirmed.

/s/ Donald S. Owens  
/s/ Donald E. Holbrook, Jr.  
/s/ Hilda R. Gage