

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAMON ELLIOTT THOMAS,

Defendant-Appellant.

UNPUBLISHED

February 5, 2004

No. 243413

Wayne Circuit Court

LC No. 01-014016

Before: Cooper, P.J., and O’Connell and Fort Hood, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of carjacking, MCL 750.529a, third-degree fleeing and eluding, MCL 257.602a(3), and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to concurrent prison terms of 135 to 240 months and 40 to 60 months on the carjacking and fleeing and eluding convictions, respectively, to be served consecutively to the mandatory two-year term for felony-firearm. He appeals as of right and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant’s sole claim on appeal is that the evidence was insufficient to sustain the verdict as to the carjacking conviction. We disagree.

“In reviewing the sufficiency of the evidence in a criminal case, we view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt.” *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997). “Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime.” *People v Gould*, 225 Mich App 79, 86; 570 NW2d 140 (1997). “It is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences.” *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

The elements of carjacking are “(1) that the defendant took a motor vehicle from another person, (2) that the defendant did so in the presence of that person, a passenger, or any other person in lawful possession of the motor vehicle, and (3) that the defendant did so either by force or violence, by threat of force or violence, or by putting the other person in fear.” *People v Davenport*, 230 Mich App 577, 579; 583 NW2d 919 (1998). A vehicle is in a person’s presence

if it is within his reach, observation, or control such that he could retain possession of it if he were not subdued by violence or fear. *People v Raper*, 222 Mich App 475, 482; 563 NW2d 709 (1997). Therefore, to take a vehicle from another person, the defendant need not physically separate the victim from his car. “The hallmark of possession is dominion and control.” *People v Green*, 228 Mich App 684, 696; 580 NW2d 444 (1998).

In this case, the victim drove his car to a gas station. He left the vehicle at a pump with the keys in the ignition while he stepped inside the building. While he was inside, defendant entered his car and attempted to take it, but was unsuccessful because he could not get it into gear. The victim ran out to stop him, but was forced away from the car when defendant pointed a gun at him and told him to get back. Defendant then drove away in the car. Defendant did not sever the victim’s possession merely by getting into the car and starting it up. Rather, the victim retained possession of the car as he approached it and did not cede possession until defendant threatened him with a gun. Therefore, the evidence was sufficient to enable a rational trier of fact to conclude that each element of carjacking had been proved beyond a reasonable doubt.

Affirmed.

/s/ Jessica R. Cooper
/s/ Peter D. O’Connell
/s/ Karen M. Fort Hood