# STATE OF MICHIGAN

# COURT OF APPEALS

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| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>January 27, 2009 |
| v | No. 281676<br>Wayne Circuit Court |
| MARKETA SATEICE WOMACK,<br><br>Defendant-Appellant. | LC No. 07-007598-FH |

Before: Talbot, P.J., and Bandstra and Gleicher, JJ.

PER CURIAM.

Defendant appeals as of right her jury trial conviction for carrying a concealed weapon, MCL 750.227. Defendant was sentenced to two years' probation. We affirm.

Defendant argues on appeal that the prosecution failed to prove each element of carrying a concealed weapon beyond a reasonable doubt. We disagree. A challenge to the sufficiency of the evidence is reviewed de novo. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). "[A] court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). Nevertheless, "[t]his Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses. Circumstantial evidence and reasonable inferences that arise from such evidence can constitute satisfactory proof of the elements of the crime." *People v Passage*, 277 Mich App 175, 177; 743 NW2d 746 (2007) (citations omitted).

MCL 750.227(2) provides: "A person shall not carry a pistol concealed on or about his or her person, or, whether concealed or otherwise, in a vehicle operated or occupied by the person, except in his or her dwelling house, place of business, or on other land possessed by the person, without a license to carry the pistol as provided by law and if licensed, shall not carry the pistol in a place or manner inconsistent with any restrictions upon such license." Carrying a concealed weapon is a general intent crime, and therefore, "[t]he prosecution need only establish that an accused had the intent to do the act prohibited – that is, 'to knowingly carry the weapon on one's person or in an automobile." *People v Hernandez-Garcia*, 266 Mich App 416, 418; 701 NW2d 191 (2005), aff'd in part, vac'd in part 477 Mich 1039 (2007), citing *People v Combs*, 160 Mich App 666, 673; 408 NW2d 420 (1987).

The term "carry," as used in the statute, means to transport or convey. *People v Green*, 260 Mich App 392, 404; 677 NW2d 363 (2004), overruled on other grounds *People v Anstey*, 476 Mich 436 (2006), citing *People v Cortez*, 206 Mich App 204, 206; 520 NW2d 693 (1994). "Carrying" is similar to possession in that "a defendant carries a weapon when he exercises some element of intentional control or dominion over it. . . . [T]his control need not amount to 'actual possession' but . . . it encompasses 'constructive possession' of the forbidden instrument as well." *People v Butler*, 413 Mich 377, 390 n 11; 319 NW2d 540 (1982). Concealment, under MCL 750.227(2) "occurs when the pistol is not discernible by the ordinary observation of persons casually observing the person carrying it . . . . [T]he weapon need not be totally concealed." *Hernandez-Garcia*, *supra* at 421-422.

In determining "what circumstantial evidence is sufficient to sustain a conviction of carrying a weapon in a motor vehicle," courts emphasize "the relevancy of the following factors either alone or in combination: (1) the accessibility or proximity of the weapon to the person of the defendant, (2) defendant's awareness that the weapon was in the motor vehicle, (3) defendant's possession of items that connect him to the weapon, such as ammunition, (4) defendant's ownership or operation of the vehicle, and (5) the length of time during which defendant drove or occupied the vehicle." *Green*, *supra* at 405.

After defendant was arrested, police found a fully loaded 40-caliber semiautomatic weapon, wrapped in a sock, inside defendant's purse, which was retrieved by police at defendant's request from inside a bar adjacent to the street where police engaged in a prolonged struggle with codefendant, Harrick Darnell Beamon. Defendant contends that the prosecution presented no evidence that defendant had the gun with her in the vehicle, and did not prove that she went into the building and placed her purse on the bar while the officers were engaged with Beamon. This argument has no merit. Officer Kari Kammerzell testified that she saw a black Coach purse on the center console of the U-Haul truck, where police first approached defendant and Beamon, while defendant was seated therein. Sergeant Jason Sloan and Officer James Markham both testified that, while they were struggling with Beamon, they saw defendant outside the truck carrying a black purse. Kammerzell and Officer Sheila House later retrieved a black Coach purse from inside the building, and defendant identified the purse as hers. Once back at the police station, House found the 40-caliber weapon inside this purse. This testimony illustrates that defendant exercised dominion and control over the purse and the weapon found therein.

Furthermore, the gun was "concealed" simply by being inside the purse, because once inside the purse, the gun was "not discernible by the ordinary observation of persons casually observing the person carrying it." *Hernandez-Garcia*, *supra* at 421-422. And, it was further hidden by the sock in which it was wrapped. Finally, defendant did not have a permit to carry the weapon. Therefore, the testimony of the four officers was sufficient for a rational jury to conclude that defendant had a gun that she was not permitted to carry, the gun was concealed in her purse, and she had the purse with her both in the car and on the street.

It does not matter that the purse, when found, was located inside the bar and not in the truck or on the street. Kammerzell testified that she was preoccupied with restraining Beamon, and thus, unable to monitor defendant's every move. The officers did testify that the door to the building was open, and it does not strain credulity to conclude that during the five-minute

struggle between the officers and Beamon, defendant had plenty of time to enter the building and set her purse down.

Defendant further contends that the prosecutor failed to prove that the "place of business" exception did not apply. We disagree. The statute provides that, "absent a concealed weapons permit, a person may not carry a pistol in a concealed manner except in a dwelling house, place of business, or other land possessed by the person." *People v Pasha*, 466 Mich 378, 381; 645 NW2d 275 (2002). However, in order to qualify for the dwelling house exception, and by analogy, the place of business exception, "*the defendant* must present evidence that the location where the concealed pistol was carried was defendant's" place of business. *Id.* at 382-383 (emphasis added). In this case, while House testified that defendant stated that the bar in which the purse was found was her family's business, defendant presented no evidence at trial that she had legal right to be there. "The prosecution need not disprove statutory exceptions unless advanced by defendant." *People v Carey*, 36 Mich App 640, 641; 194 NW2d 93 (1971).

Moreover, even if defendant had presented such evidence, both Sloan and Markham saw defendant carrying her purse outside of the U-Haul while they struggled with Beamon. "Carrying a concealed weapon on the easement is inconsistent with the public's general enjoyment of the easement and, no matter what rights the defendant may have on the adjoining property, his use of the easement must be subservient to the public's use." *People v Marrow*, 210 Mich App 455, 463; 534 NW2d 153 (1995), aff'd 453 Mich 903 (1996), overruled in part *Pasha*, *supra* at 379. Therefore, the prosecution presented sufficient evidence from which a rational jury could find defendant guilty beyond a reasonable doubt of carrying a concealed weapon.

We affirm.

/s/ Michael J. Talbot
/s/ Richard A. Bandstra
/s/ Elizabeth L. Gleicher