

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ARTICIA MONIQUE CLARK,

Defendant-Appellant.

UNPUBLISHED

January 21, 2010

No. 289828

Wayne Circuit Court

LC No. 08-010427-FH

Before: Murphy, C.J., and Jansen and Zahra, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of carrying a weapon in a motor vehicle, MCL 750.227, and was sentenced to probation for one year. She appeals as of right, asserting that the evidence was insufficient to show that she was carrying the weapon. We conclude the evidence was sufficient to sustain the conviction. We affirm.

In evaluating a challenge to the sufficiency of the evidence at a bench trial, “this Court reviews the evidence in a light most favorable to the prosecutor to determine whether any trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt. Findings of fact by the trial court may not be set aside unless they are clearly erroneous.” *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006). “Circumstantial evidence and reasonable inferences drawn from it may establish the elements of the crime.” *People v James Green*, 260 Mich App 392, 404; 677 NW2d 363 (2004), overruled in part on other grounds in *People v Anstey*, 476 Mich 436; 719 NW2d 579 (2006) (citation 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.

As used in the statute, “carry” means to transport or convey. *Green, supra*, p 404. However, more than mere operation of a vehicle with knowledge that it contains a weapon is required. *People v Butler*, 413 Mich 377, 384-385; 319 NW2d 540 (1982); *Green, supra*, p 404. Factors

relevant to a determination whether a defendant was carrying a weapon in a motor vehicle include:

(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. [*Butler, supra*, p 390 n 11.]

In the present case, a police officer testified that he saw the handgrip of a handgun wedged between the driver's seat and the passenger seat of the vehicle in which defendant was sitting. The gun was "right next to" her right leg. The handgrip was sticking up far enough so that the officer could see it. Defendant was seated in the driver's seat, she was the only person in the car, and she was the only person who had operated it for several hours. She also indicated that it was her car. Although defendant denied being aware that the gun was present in the car, the trial court found that her testimony was not credible, particularly in light of the police officer's testimony, which the trial court found was credible, describing the visibility of the gun and its proximity to defendant. This Court will not interfere with the trier of fact's role in determining the credibility of witnesses. *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008). The evidence was sufficient to enable the trial court to reasonably infer that defendant was carrying the gun. See *People v Nimeth*, 236 Mich App 616, 622; 601 NW2d 393 (1999).

Affirmed.

/s/ William B. Murphy

/s/ Kathleen Jansen

/s/ Brian K. Zahra