

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JUSTIN SHERODD DOSS,

Defendant-Appellant.

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UNPUBLISHED

January 28, 2010

No. 289034

Berrien Circuit Court

LC No. 2008-402558-FH

Before: Donofrio, P.J., and Meter and Murray, JJ.

PER CURIAM.

Defendant appeals by right his jury trial convictions for two counts of carrying a concealed weapon (CCW), MCL 750.227. Because the prosecutor presented sufficient evidence to support defendant's CCW convictions, we affirm.

Defendant's convictions arose from his alleged possession of a handgun. At approximately 9:00 p.m., defendant, accompanied by Antonio Rooks and a third person, arrived at the home of Jermaine Moore in Benton Harbor. Moore was standing across the street in a friend's driveway. Defendant left the car and approached Moore, while Moore's mother (Ms. Moore) and girlfriend left the home to join Moore. Defendant and Moore spoke, and defendant and Moore went to the car. Rooks then left the car and started to speak with Moore. The conversation escalated and Moore decided that he wanted to fight Rooks. Ms. Moore testified that Moore told defendant, "I fight like this", and raised his fists. Rooks then removed a handgun from his pants under his shirt and passed it to defendant. Ms. Moore told Moore's girlfriend to call the police and she started to do so. Defendant then told Rooks that they should leave. Ms. Moore then saw the two enter the car and drive off. Ms. Moore and Moore's girlfriend managed to obtain the license plate number and provided it to the police along with the car description and the direction proceeded.

Other witnesses provided descriptions of the imminent fight and defendant's involvement. Two witnesses, including Moore's girlfriend, testified that they saw Rooks pass defendant something concealed in a red handkerchief or bandana prior to Rooks' attempt to fight Moore.

Benton Harbor police officers responded and shortly thereafter discovered the car matching the description in a garage at Rooks' home. The first officer who arrived noticed defendant in the back seat of the car. His partner apprehended defendant. As the first officer

handcuffed his suspect, Rooks arrived and asked whether the first individual wanted Rooks to call someone. After police detained Rooks, the officers searched the area and discovered a loaded handgun in Rooks' mailbox.

On appeal, defendant argues that the prosecution failed to present sufficient evidence to support defendant's CSC convictions. We review a defendant's allegations regarding insufficiency of the evidence de novo. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). We view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *Id.* However, we will not interfere with the jury's role of determining the weight of the evidence or the credibility of the witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1202 (1992). Satisfactory proof of the elements of the crime can be shown by circumstantial evidence, and the reasonable inferences arising therefrom. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). It is for the trier of fact to determine what inferences fairly can be drawn from the evidence and the weight to be accorded to those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

"To support a conviction for carrying a weapon in a vehicle, the prosecution must show: (1) the presence of a weapon in a vehicle operated or occupied by the defendant, (2) that the defendant knew or was aware of its presence, and (3) that he was 'carrying' it." *People v Nimeth*, 236 Mich App 616, 622; 601 NW2d 393 (1999), quoting *People v Courier*, 122 Mich App 88, 90; 332 NW2d 421 (1982); MCL 750.227. Similarly, to prove that a defendant carried a concealed weapon on his person, the prosecution must show that the defendant carried the weapon concealed on or about the defendant's person. *People v Shelton*, 93 Mich App 782, 785; 286 NW2d 922 (1979); MCL 750.227. "Carrying" a weapon for purposes of CCW is similar to possession in that it indicates the defendant has intentional control or dominion over the weapon. *People v Butler*, 413 Mich 377, 390 n 11; 319 NW2d 540 (1982). In *People v Jones*, 12 Mich App 293, 295; 162 NW2d 847 (1968), this Court held that the word "concealment" for purposes of MCL 750.227 does not mean total concealment. Rather, a weapon is concealed when it is "not discernible by the ordinary observation of persons coming into contact with the person carrying it, casually observing him, as people do in the ordinary and usual associations of life." *Id.* at 296. In addition, our Supreme Court has held that MCL 750.227(2) requires only that a defendant knowingly possess a concealed weapon. *People v Hernandez-Garcia*, 477 Mich 1039, 1039-1040 n 1; 728 NW2d 406 (2007). The *mens rea* requirement does not extend to the defendant's purpose for carrying the concealed weapon. *Id.*

The prosecution presented sufficient evidence to support both CCW convictions. Again, in reaching its conclusions the jury may base its decision on inferences based on the facts presented. *Hardiman*, 466 Mich at 428. Moreover, an inference may be properly based on another inference so long as the inferences remain "reasonable." *Id.* at 425-428. "The rule is not that an inference, no matter how reasonable, is to be rejected if it, in turn, depends upon another reasonable inference; rather the question is merely whether the total evidence, including reasonable inferences, when put together is sufficient to warrant a jury to conclude that defendant is guilty beyond a reasonable doubt. . . . If enough pieces of a jigsaw puzzle fit together the subject may be identified even though some pieces are lacking." *Id.* at 425-426,

quoting *Dirring v United States*, 328 F2d 512, 515 (CA 1, 1964). In the instant case, the witness' testimony supports a finding that Rooks possessed the firearm when he and defendant arrived to confront Jermaine Moore. Ms. Moore testified that she saw Rooks take a gun from under his shirt and give it to defendant. This occurred both after defendant and Rooks specifically sought out Jermaine Moore to confront him, and after he indicated that he planned to fight Rooks with only his fists. Thus, the handoff occurred under circumstances that tend to show that what was passed was a weapon. Other witnesses also saw Rooks pass defendant something, albeit in a red handkerchief. Rooks was later seen by officers walking away from an area at his mother's home where a handgun was located. This evidence, when taken as a whole in the light most favorable to the prosecution, supports a finding that Rooks had a gun, and gave it to defendant. While this version of events would require the jury to select what portions of each witness's testimony to believe, a jury is free to believe or to disbelieve all or part of any of the evidence presented. *People v Perry*, 460 Mich 55, 63; 594 NW2d 477 (1999).

Other evidence, and reasonable inferences drawn from it, supports the jury's finding concerning defendant's initial concealment, and his possession of the handgun in the car. The witnesses other than Ms. Moore testified that the object given to defendant was concealed in a red handkerchief. No direct evidence shows that defendant took the gun into the car. However, even though the witnesses stated that they watched defendant and Rooks leave, no witness testified to observing defendant return the object to Rooks before the two entered the car. In addition, the location of Rooks near the place of concealment, coupled with the testimony that defendant remained in the car, and defendant's continued possession of the handkerchief, support a reasonable inference that defendant entered the car with the weapon, wrapped in a handkerchief, kept the handkerchief, and handed the weapon back to Rooks to hide as the two drove to Rooks' home. Even though the firearm was not in plain view through the entire circumstances of this case, the jury could reasonably have inferred that the defendant was in knowing possession of it for at least a portion of the time that defendant and Rooks drove from the confrontation to Rooks' home. As with the initial transfer of the gun, the jury was free to believe all or part of witness testimony concerning concealment or possession. *Perry*, 460 Mich at 63.

Affirmed.

/s/ Pat M. Donofrio  
/s/ Patrick M. Meter  
/s/ Christopher M. Murray