

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNEY DEMETRICE GUNN,

Defendant-Appellant.

UNPUBLISHED

November 16, 2010

No. 292419

Wayne Circuit Court

LC No. 08-015882-FH

Before: M. J. KELLY, P.J., and K. F. KELLY and BORRELLO, JJ.

PER CURIAM.

Defendant Kenney Demetrice Gunn appeals as of right his jury conviction of carrying a concealed weapon in a motor vehicle. See MCL 750.227(2). The trial court sentenced defendant to serve probation for one year. Because we conclude that there were no errors warranting relief, we affirm. We have decided this appeal without oral argument under MCR 7.214(E).

Defendant first argues that the evidence was insufficient to support his conviction. This Court reviews challenges to the sufficiency of the evidence by reviewing the record evidence de novo 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. *People v Roper*, 286 Mich App 77, 83; 777 NW2d 483 (2009). Circumstantial evidence and reasonable inferences drawn therefrom are sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). It is for the trier of fact 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).

It is a felony for a person to carry a pistol, concealed or otherwise, in a vehicle operated or occupied by him. MCL 750.227(2). The elements of the crime are (1) the presence of a weapon in a vehicle operated or occupied by the defendant, (2) that defendant knew or was aware of the weapon's presence, and (3) that the defendant was carrying the weapon. *People v Nimeth*, 236 Mich App 616, 622; 601 NW2d 393 (1999). "Carrying" is similar to possession, which may be actual or constructive, and denotes intentional control or dominion over the weapon. *People v Butler*, 413 Mich 377, 390 n 11; 319 NW2d 540 (1982).

The evidence showed that defendant was in the driver's seat of a truck that was parked in a driveway with the engine running. The truck had North Carolina license plates, defendant had a purchase permit authorizing him to purchase a gun in North Carolina, and defendant indicated that he had recently moved to Michigan from North Carolina. Defendant, the sole occupant of the truck, was seated within arm's reach of the gun and knew exactly where it was, retrieving it from the center console when asked if he had a gun. It could reasonably be inferred from the evidence that defendant placed the gun in the center console, permitting a reasonable inference that he knowingly possessed the gun while in the vehicle. Although there was no direct evidence that defendant transported the gun in the vehicle, defendant did not live at the house where he was found and his vehicle was in the driveway with the engine running. The evidence supported an inference that defendant drove to the location with the gun, and thus knowingly conveyed the gun in the vehicle. Although defendant had a permit to purchase a gun, the permit did not allow him to carry the weapon in his truck without complying with one of the exceptions set forth in MCL 750.231a. Therefore, the evidence was sufficient to prove defendant's guilt beyond a reasonable doubt.

Defendant also argues that he is entitled to a new trial because the jury's verdict is against the great weight of the evidence. Defendant did not preserve this issue by raising it in a motion for a new trial. MCR 6.431(A); *People v Musser*, 259 Mich App 215, 218; 673 NW2d 800 (2003). Therefore, defendant must demonstrate a plain error that affected the outcome of the lower court proceedings. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

On a defendant's motion, a court may order a new trial on any ground that would support appellate reversal of the conviction or because it believes the verdict resulted in a miscarriage of justice. MCR 6.431(B). A motion for a new trial may be granted where the verdict was manifestly against the clear weight of the evidence, i.e., the evidence so clearly weighed in the defendant's favor that it would be a miscarriage of justice to allow the verdict to stand. *Roper*, 286 Mich App at 89.

There is no basis for concluding that defendant's conviction is against the great weight of the evidence. Only one witness testified at trial and his testimony was sufficient to prove that defendant committed the crime charged beyond a reasonable doubt. The evidence did not preponderate in defendant's favor. Further, defendant has not suggested that the jury's verdict was the result of any improper motive. The verdict did not result in a miscarriage of justice.

Affirmed.

/s/ Michael J. Kelly
/s/ Kirsten Frank Kelly
/s/ Stephen L. Borrello