

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
December 22, 2011

v

CRAIG SPENCER HODGES,

Defendant-Appellant.

No. 300962
Gratiot Circuit Court
LC Nos. 10-006035-FH
10-006036-FH
10-006037-FH

Before: CAVANAGH, P.J., and SAWYER and METER, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of one count of operating a motor vehicle without security (insurance), MCL 500.3102 (LC No. 10-006035-FH), one count of driving with a suspended license, second offense, MCL 257.904(3)(b) (LC No. 10-006036-FH), and one count of carrying a concealed weapon (CCW), MCL 750.227(1) (LC No. 10-006037-FH). Defendant was sentenced to concurrent terms of six months in jail for both operating a motor vehicle without insurance and driving while license suspended, and 13 to 60 months' imprisonment for CCW. Defendant appeals as of right and is only challenging his CCW conviction. We affirm.

In July 2010, defendant was stopped by police for speeding while driving his motorcycle. As defendant reached for his wallet to retrieve his identification at the request of the patrol officer, the officer noticed a wooden handle sticking out from underneath defendant's leather coat. It was determined to be a knife handle, the blade of which was in a sheath tucked into defendant's pocket. At the time of the traffic stop, defendant was on his way to his attorney's office to drop off mortgage papers. Defendant argues on appeal that the evidence presented at trial was insufficient to convict him of CCW because there was evidence showing that he was carrying a hunting knife to be used for hunting purposes, specifically for fishing. We disagree.

We review sufficiency-of-the-evidence claims de novo, *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001), with an eye toward determining whether a rational trier of fact could conclude that the essential elements of the crime were proven beyond a reasonable doubt, *People v Wolfe*, 440 Mich 508, 515-514; 489 NW2d 748 (1992).¹ In doing so, all evidence must be viewed in a light most favorable to the prosecution. *People v Railer*, 288 Mich App 213, 216; 792 NW2d 776 (2010). We defer to the fact-finder's weighing of the evidence and assessment of the credibility of the witnesses. *Wolfe*, 440 Mich at 514.

¹ Amended on other grounds 441 Mich 1201 (1992).

To convict a defendant of CCW, the prosecution must prove beyond a reasonable doubt that the defendant knowingly carried a dangerous weapon, concealed on or about his person. MCL 750.227(1). Our Supreme Court noted that some weapons are dangerous weapons per se, including the cutting instruments set forth in § 227(1), as well as “similar articles_[] designed for the purpose of bodily assault.” *People v Vaines*, 310 Mich 500, 505; 17 NW2d 729 (1945). Other similar instruments (e.g., “pocket knives, razors, . . . cutting tools”) become dangerous weapons within the language of § 227(1) when used or carried for use as weapons. *Id.* Furthermore, for a weapon to be concealed, it cannot be visible upon “ordinary observation of persons coming in contact with the person carrying it, casually observing him, as people do in the ordinary and usual associations of life.” *People v Jones*, 12 Mich App 293, 296; 162 NW2d 847 (1968).

The Legislature, however, created an exception for carrying a hunting knife, as long as the knife is “adapted and carried as such.” MCL 750.227(1). The phrase “adapted and carried as such” means that the person has to be carrying and using the knife for the purposes of hunting. *People v Payne*, 180 Mich App 283, 287; 446 NW2d 629 (1989). When determining whether the hunting knife is being used for the purposes of hunting, all surrounding facts and circumstances must be examined.

The officer who stopped defendant testified that defendant told him he was carrying the knife in issue for protection because there had been people breaking into his house. The officer stated that defendant did not mention anything about going hunting or fishing. Furthermore, the prosecution introduced evidence showing that defendant did not have a fishing license and had not been fishing in a few years. Defendant denied telling the officer he was carrying the knife for protection. According to defendant, he was planning on using the knife on a fishing trip he was taking right after meeting with his attorney. He further explained that even though he planned on returning to his home before heading out on the trip, he took the knife, which had sentimental value to him, because he did not want it stolen from his home why he was dropping off the mortgage papers.

Although defendant maintains he is not asking this Court to reweigh the evidence or reassess the credibility of the witnesses, his argument is entirely based on such an approach. There is a conflict between the testimony given by the officer who stopped defendant and defendant about what he told the officer about the reason he was carrying the knife. This was a credibility determination best left to the trier of fact to resolve, *Wolfe*, 440 Mich at 514-515, as was the general determination on whether to credit defendant’s story on why he was carrying the knife. Considering the evidence in a light most favorable to the prosecution, and recognizing the superior position of the jury to assess witness credibility, there is sufficient evidence to support a finding that the knife was not used for hunting purposes. Accordingly, a rational jury could conclude beyond a reasonable doubt that defendant’s knife did not fall within the statutory exception and, therefore, find him guilty of CCW.

Affirmed.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Patrick M. Meter