

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHNNY DAVID DURR,

Defendant-Appellant.

UNPUBLISHED

May 24, 1996

No. 167810

LC No. 93-004590

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TODD FITZGERALD FLETCHER,

Defendant-Appellant.

No. 168570

LC No. 93-004590

Before: Sawyer, P.J., and Griffin and M. G. Harrison*, JJ.

PER CURIAM.

Following a bench trial, both defendants were convicted of larceny from a motor vehicle, MCL 750.356a; MSA 28.588a, and carrying a concealed weapon in a motor vehicle, MCL 750.227; MSA 28.424. Defendant Durr was sentenced to two to five years' imprisonment for each conviction. Defendant Fletcher was sentenced to three years' probation and was ordered to serve the first year of the probation period in the Wayne County Jail. Defendants appeal as of right. We affirm.

Defendants first argue that the evidence was insufficient to establish beyond a reasonable doubt that they were carrying a concealed weapon in a motor vehicle. We disagree.

* Circuit judge, sitting on the Court of Appeals by assignment.

In reviewing defendants' argument, this Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational factfinder could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994).

In order to convict a person of carrying a concealed weapon in an automobile, pursuant to MCL 750.227(2); MSA 28.424(2), the prosecution must prove beyond a reasonable doubt (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 the defendant was "carrying" it. *People v Courier*, 122 Mich App 88, 90; 332 NW2d 421 (1982). Both knowledge of the gun's presence in the vehicle and the element of "carrying" can be proven by examining factors such as proximity of the weapon to the defendant and whether the defendant owned or operated the vehicle. *Id.* at 91. Circumstantial evidence and the reasonable inferences arising from the evidence may constitute satisfactory proof of the elements of an offense. *People v Greenwood*, 209 Mich App 470, 472; 531 NW2d 771 (1995).

In this case, the evidence presented supported a finding that both defendants were guilty beyond a reasonable doubt of carrying a concealed weapon in an automobile. When police stopped the vehicle that defendant Durr was driving, they found two pistols directly below the driver's seat where Durr was sitting. The police also found one pistol on the floor directly under the passenger's seat of the vehicle where defendant Fletcher was sitting. Each defendant's proximity to the pistols found, and the accessibility each defendant had to the pistols, provides circumstantial evidence that each defendant was carrying a weapon. *People v Emery*, 150 Mich App 657, 668; 389 NW2d 472 (1986). The fact that the pistols were found in plain view leads to the reasonable inference that both defendants knew of the presence of the pistols in the vehicle. *Id.*, 669; *Courier, supra*, 91. Furthermore, Fletcher's testimony that he had seen Durr carrying one of the pistols the police found under the driver's seat of the vehicle lead to the reasonable inference that Durr exerted control over that pistol and was the person who was carrying it. *Emery, supra*, 91.

Defendant Fletcher's argument that his conviction should be reversed because the prosecution never proved that the pistols found in Durr's vehicle were operable is without merit. Operability is an affirmative defense to a charge of carrying a concealed weapon in a motor vehicle. *People v Gardner*, 194 Mich App 652, 654; 487 NW2d 515 (1992). However, because Fletcher never raised the issue of operability and never produced any evidence to show that the pistols found in Durr's vehicle were inoperable, the trial court was entitled to conclude that all three of the pistols found were operable. *People v Parr*, 197 Mich App 41, 45; 494 NW2d 768 (1992).

Affirmed.

/s/ David H. Sawyer
/s/ Richard Allen Griffin
/s/ Michael G. Harrison