

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTONIO SMITH,

Defendant-Appellant.

UNPUBLISHED

June 7, 1996

No. 181178

LC No. 94-003980

Before: O'Connell, P.J., and Gribbs and T. P. Pickard,* JJ.

PER CURIAM.

Defendant appeals as of right his conviction by jury of carrying a concealed weapon in a motor vehicle, MCL 750.227; MSA 28.424. We affirm.

Defendant first contends that there was insufficient evidence to support his conviction of carrying a concealed weapon in a motor vehicle. In examining defendant's sufficiency of the evidence claim, this Court reviews the evidence in the light most favorable to the prosecutor and determines whether, given the evidence as a whole, a rational trier of fact could find that all of the necessary elements of the charged offense were established beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 513-515; 489 NW2d 748, amended 441 Mich 1201 (1992); *People v Lawton*, 196 Mich App 341, 348; 492 NW2d 907 (1992).

There are three essential elements to the crime of carrying a concealed weapon in a motor vehicle:

- (1) First that a pistol was in a vehicle that the defendant was in.
- (2) Second, that the defendant knew the pistol was there.
- (3) Third, that the defendant took part in carrying or keeping the pistol in the vehicle. [CJI2d 11.1; *See also People v Butler*, 413 Mich 377, 383-384; 319 NW2d 540 (1982); *People v Courier*, 122 Mich App 88, 91; 332 NW2d 421 (1982).]

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

Defendant specifically asserts that the prosecutor failed to present sufficient evidence at trial with respect to the elements of knowledge and carrying. We disagree.

The prosecutor presented sufficient evidence from which the jury could infer knowledge. On the evening of February 24, 1994, defendant, who was driving a vehicle which he had borrowed from a friend, was stopped by two Detroit police officers for disregarding a stop sign. After being stopped, defendant immediately got out of the vehicle carrying a partially full beer bottle. One of the officers looked into the car to determine if there was additional alcohol present and saw a blue steel automatic weapon. The gun found in the vehicle which defendant was driving was a large heavy weapon. The arresting officer testified that the handle of the weapon and part of its slide were clearly visible while standing outside the vehicle. Moreover, when questioned about the gun, defendant did not indicate that he did not know that the gun was there, but instead indicated that the weapon belonged to “Charles”. While the car’s owner testified that the gun was hers and that defendant did not know it was in the car when he borrowed the car, the jury clearly did not find her testimony credible. “Questions of credibility are left to the trier of fact, and will not be resolved anew by this Court.” *People v Premen*, 210 Mich app 211, 221; 532 NW2d 872 (1995). Based on this evidence, a rational trier of fact could reasonably infer that defendant knew that the gun was in the vehicle.

The prosecutor also presented sufficient evidence that defendant was carrying the weapon. “Carrying” is an essential element of the offense of carrying a concealed weapon in a motor vehicle. *Butler, supra*, 413 Mich 385-386. Several factors maybe considered in establishing the element of carrying including: “(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.” *Id.* at 390, n 1.

There was sufficient evidence upon which defendant’s “carrying” could be inferred. The weapon was on the floor board by the driver’s seat of the vehicle which defendant was driving. The gun was readily accessible to the driver if he were to bend over. Defendant was driving the vehicle and had been in control of the car for approximately forty-five minutes prior to being stopped by police. Lastly, as previously discussed, the evidence presented was sufficient to establish that defendant knew that the weapon was in the car.

Although defendant argues that this circumstantial evidence is insufficient to prove carrying in light of defendant’s reasonable and unrefuted theory of innocence, this argument lacks merit. While it is incumbent on the prosecutor to prove every element of the charged offense beyond a reasonable doubt, *People v Hubbard*, 387 Mich 294, 299; 196 NW2d 768 (1972), the prosecutor may prove the required elements of an offense through the use of circumstantial evidence and the inferences which may reasonably be drawn therefrom. *People v Acosta*, 153 Mich App 504, 511; 396 NW2d 463 (1986). Moreover, the prosecutor, is not required to disprove all of the defense’s theories of innocence. The prosecution need only provide sufficient evidence to prove its own theory beyond a reasonable doubt.

People v Barr, 156 Mich App 450, 463-464; 402 NW2d 489 (1986); *People v Richardson*, 139 Mich App 622 ; 362 NW2d 853 (1984). Thus, reviewing all the evidence, both direct and circumstantial, in a light most favorable to the prosecution, we find that the evidence presented at trial was sufficient to establish each element of the charged offense beyond a reasonable doubt.

Defendant next contends that the trial court erred in denying defendant's motion for new trial because the verdict was manifestly against the great weight of the evidence. In making a determination as to whether a verdict is against the great weight of the evidence, this Court reviews the whole body of proofs presented. In so doing, however, this Court will not disturb a trial court's determination with respect to a motion for new trial absent a finding of an abuse of discretion. *People v Herbert*, 444 Mich 466, 477; 511 NW2d 654 (1993).

The trial court did not abuse its discretion in denying defendant's motion for new trial. Defendant had been driving his friend's vehicle for approximately forty-five minutes, when he was pulled over by police. The gun found in the vehicle was located under the driver's seat and was accessible to the driver. Moreover, the gun was protruding out from under the seat and was visible. When questioned about the weapon, defendant did not tell police that he did not know that the weapon was in the car; he told them that it belonged to Charles. The only evidence which supports defendant's claim of innocence is the testimony of the car's owner. The credibility of her testimony, however, was called into question at trial based on her testimony that she and defendant were friends and that she was aware of the serious consequences he would face if convicted. Thus, we find defendant's conviction was not manifestly against the great weight of the evidence.

Affirmed.

/s/ Peter D. O'Connell

/s/ Roman S. Gribbs

/s/ Timothy P. Pickard