

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERRY ANTHONY HARVEY,

Defendant-Appellant.

UNPUBLISHED
October 21, 1997

No. 199235
Recorder's Court
LC No. 95-010243

Before: Fitzgerald, P.J., and Markey and J.B. Sullivan*, JJ

PER CURIAM.

Following a bench trial, defendant was convicted of carjacking, MCL 750.529a; MSA 28.797(a), and possession of a firearm during the commission of a felony, MCL 750.227b(a); MSA 28.424(2). Defendant was sentenced to one to ten years' imprisonment for the carjacking conviction to be served consecutively to two years' imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant's first argument is that there was insufficient evidence to support his conviction for carjacking. When reviewing the sufficiency of the evidence in a bench trial, this Court views the evidence in the light most favorable to the prosecution in order to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985). A conviction for carjacking requires proof beyond a reasonable doubt that defendant took a motor vehicle "from another person, in the presence of that person or the presence of a passenger or in the presence of any other person in lawful possession of the motor vehicle" MCL 750.529a; MSA 28.797(a). At trial, the victim testified that he was driving a friend's automobile on a public street in the City of Detroit at the time of the carjacking. The possession, use, and control of an automobile in a public place properly gives rise to the inference that the person is either the owner of the automobile or in lawful possession of it with the express or implied consent of the owner. *Bieszek v Avis Rent-A-Car System, Inc.*, 224 Mich App 295, 299; ___ NW2d ___ (1997). We find that the victim's testimony was sufficient to establish that the victim had lawful possession of the vehicle at the time of the carjacking.

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

Defendant's second argument is that insufficient evidence existed to support his conviction for felony-firearm. In order to properly convict defendant of felony-firearm, defendant must have possessed an actual firearm. Firearm, for purposes of the felony-firearm statute, is defined as "any weapon from which a dangerous projectile may be propelled by using explosives, gas or air as a means of propulsion" MCL 8.3t; MSA 2.212(20). The victim testified that he was approximately four to six feet from defendant when the gun was pointed at his face, he was able to describe the weapon as a revolver with a long barrel, and he believed the gun to be real. We find that there was sufficient evidence from which a rational trier of fact could determine beyond a reasonable doubt that defendant possessed a firearm during the commission of the carjacking.

Defendant further argues that because the alleged firearm testified to by the victim was neither fired nor recovered, it cannot be proven beyond a reasonable doubt that defendant possessed an actual firearm. Moreover, where the victim testified that he saw a gun, the defendant may be properly convicted of felony-firearm, even though the actual firearm is not offered into evidence. *People v Hayden*, 132 Mich App 273, 295-296; 348 NW2d 672 (1984). Therefore, defendant's argument has no merit.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Jane E. Markey

/s/ Joseph B. Sullivan