

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JEFFREY DALE WILSON,

Defendant-Appellee.

UNPUBLISHED

May 11, 2001

No. 229080

Grand Traverse Circuit Court

LC No. 00-008174-FH

Before: McDonald, P.J., and Smolenski and K. F. Kelly, JJ.

PER CURIAM.

The prosecutor appeals as of right from the trial court's order granting defendant's motion to dismiss two counts of carrying a concealed weapon (CCW) in a vehicle, MCL 750.227(2); MSA 28.424(2). We reverse the trial court's order and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's vehicle was stopped by a police officer investigating a complaint of a window peeper. A search of the vehicle's trunk revealed two long guns, two handguns in soft-sided zippered cases, and several hundred rounds of ammunition. Defendant did not have a license to carry the weapons. He was charged with two counts of CCW in a vehicle and one count of disorderly person-window peeper, MCL 750.167(1)(c); MSA 28.364(1)(c).

Defendant moved to dismiss the charges of CCW on the ground that the prosecution could not prove the element of carrying. The trial court agreed and granted the motion, finding that the undisputed evidence showed that the weapons were not on or about defendant's person, and were not readily accessible to him because they were locked in the trunk. The trial court dismissed the charges of CCW and remanded the misdemeanor charge of disorderly person-window peeper to the district court for prosecution.¹

Statutory interpretation presents a question of law which we review de novo. *People v Morey*, 461 Mich 325, 329; 603 NW2d 250 (1999). The primary goal of judicial interpretation of a statute is to give effect to the intent and purpose of the Legislature. *Id.* at 329-330.

¹ Defendant represents that the prosecution has dismissed the misdemeanor charge without prejudice.

MCL 750.227(2); MSA 28.424(2) provides in pertinent part:

A person shall not carry a pistol concealed on or about his or her person, or, whether concealed or otherwise, in a vehicle operated or occupied by the person, . . . without a license to carry the pistol as provided by law

The elements of CCW in a vehicle are: (1) the pistol was in a vehicle operated or occupied by the defendant; (2) the defendant knew that the pistol was in the vehicle; and (3) the defendant took part in carrying or keeping the pistol in the vehicle. CJI2d 11.1. Carrying a concealed weapon is a general intent crime. The only intent needed is that necessary to do the prohibited act, i.e., to knowingly carry a weapon in a vehicle. *People v Combs*, 160 Mich App 666, 673; 408 NW2d 420 (1987). The element of “carrying” has not been specifically defined, but is distinct from knowledge of the weapon’s presence in the vehicle, and does not automatically follow from proof of knowledge. *People v Courier*, 122 Mich App 88, 90; 332 NW2d 421 (1982); *People v Butler*, 413 Mich 377, 390; 319 NW2d 540 (1982). In *Butler, supra*, our Supreme Court noted:

Hard and fast rules regarding what circumstantial evidence is sufficient to sustain a conviction of carrying a weapon in a motor vehicle have not evolved. The decisions have, however, emphasized the relevancy of the following factors either alone or in combination: (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. [*Butler, supra* at 390 n 11.]

Although the Court added, “We do not wish to be understood, by reference to the foregoing factors, as expressing any view with regard to their relevancy or importance,” in *Courier, supra*, we identified the proximity of the weapon to the person of the defendant and the defendant's ownership or operation of the vehicle as notable factors supporting the defendant’s conviction. *Courier, supra* at 90-91.

The prosecutor argues that the trial court erred by dismissing the charges of CCW. We agree, reverse the trial court’s order, and remand for further proceedings consistent with this opinion. The trial court’s reliance on cases such as *People v Adams*, 173 Mich App 60; 433 NW2d 333 (1988), and *People v Emery*, 150 Mich App 657; 389 NW2d 472 (1986), as support for its decision was misplaced. In *Adams, supra*, we affirmed the trial court’s decision to quash the charge of CCW on the ground that the defendant had neither actual nor constructive possession of the pistol, because it was not on or about her person and was in fact located in a suitcase which was not within the defendant’s control. We concluded that on those facts, the defendant could not be said to be carrying the weapon. *Id.* at 62-63. That case did not concern the carrying of a weapon in a vehicle; therefore, whether the weapon was on or about the defendant’s person or was in her constructive possession was crucial to the issue of carrying. In *Emery, supra*, we affirmed the defendant’s conviction of CCW in a vehicle, finding that evidence that the defendant had placed the weapon in a box which was found next to him in the vehicle he occupied was sufficient to prove the element of carrying. *Id.* at 667. That case did not require

the weapon to be within the defendant's immediate reach but merely dealt with factors to be considered when determining whether the evidence demonstrated the element of carrying.

The undisputed facts showed that defendant knowingly transported the weapons in his vehicle. While the weapons were not on or about or immediately adjacent to his person, they were in defendant's constructive possession. He had placed them in the trunk of the vehicle, of which he was the sole occupant, and he possessed the key to the trunk. We conclude that this evidence could support a finding that defendant was carrying the weapons. *Emery, supra*; *Courier, supra* at 90-91.

The Legislature's intent in enacting MCL 750.227; MSA 28.424 was to discourage persons who are fighting from suddenly drawing and using weapons. *Adams, supra* at 63. Our conclusion that a question of fact exists regarding defendant's guilt under the statute upholds the intent of the Legislature. Furthermore, we observe that if a person could never be said to be guilty of carrying a concealed weapon in a vehicle unless that weapon was immediately accessible, i.e., essentially within arm's reach, as the trial court seemingly concluded, the exceptions to MCL 750.227; MSA 28.424 found in MCL 750.231a; MSA 28.428(1) would be unnecessary.²

The trial court's order dismissing the charges of CCW in a vehicle is reversed, and this matter is remanded to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Gary R. McDonald
/s/ Michael R. Smolenski
/s/ Kirsten Frank Kelly

² Those exceptions require the firearm to be unloaded, in a wrapper or container, in the trunk of the vehicle (or inaccessible to the occupants if the vehicle has no trunk), and being transported under certain limited circumstances. MCL 750.231a(1)(c), (d), (e), and (f); MSA 28.428(1)(1)(c), (d), (e), and (f).