

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NATAN TEKLE GEBREMARIAM

Defendant-Appellant.

UNPUBLISHED

April 20, 2010

No. 288215

Kent Circuit Court

LC No. 07-012884-FH

Before: DONOFRIO, P.J., and METER and MURRAY, JJ.

PER CURIAM.

Defendant appeals as of right following his convictions for carrying a concealed weapon (CCW), MCL 750.227(2), receiving a stolen firearm, MCL 750.535b(2), and resisting arrest, MCL 750.81d(1). He was sentenced as a second habitual offender, MCL 769.11, to 24 to 90 months' imprisonment for the CCW conviction, 28 to 180 months' imprisonment for the receiving a stolen firearm conviction, and 16 to 24 months' imprisonment for the resisting arrest conviction. We affirm in part, reverse in part, and remand. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On November 5, 2007, defendant was the passenger in a vehicle with two other individuals -- the driver and a person in the backseat. Police officers initiated a traffic stop of the vehicle based on the fact that a taillight was out. When the vehicle came to a stop, the passenger in the backseat fled on foot. Both officers responded by chasing him. One of the officers decided to return to the area of the traffic stop in order to secure the police cruiser. As he approached the area, he saw defendant flee on foot. The officer ordered defendant to stop, but he did not. Another officer in the area responded to a foot chase and was able to apprehend defendant. Officers questioned defendant regarding why he ran, and he responded that he was scared. Once two boxes of empty ammunitions were discovered in the car (one Winchester and one Hornady), it was believed that defendant's reason for fleeing may have been to dispose of a firearm. A ground search revealed a nine-millimeter handgun in the mulch of an abandoned apartment complex. This was along the path of defendant's flight. Defendant had been placed under arrest for fleeing and eluding and was later notified that he would be charged with CCW. He asked the arresting officers where they found the gun, even though he had not been informed that the weapon at issue was a gun. He also told the officers that they would not find his prints

on the gun. Although no workable prints were retrieved from the gun or the Winchester ammunitions box, defendant's fingerprint was lifted from the empty Hornady box.¹ In addition to this evidence, the jury was informed that defendant had recently been arrested in the same area of town for driving with an assault rifle in the trunk. At the time of the prior arrest, defendant was wearing a bulletproof vest and told the arresting officers the vest was for protection because "you know how it is."

On appeal, defendant argues that the evidence was insufficient to support his convictions for CCW and receiving/concealing a stolen firearm. He maintains that he did not know of the gun's presence in the car and never had possession of the gun. Defendant claims that the third occupant of the car (whom neither defendant nor the driver would identify) could have just as likely disposed of the gun when he fled the scene before defendant.

The elements of carrying a concealed weapon in a vehicle are: (1) the weapon was in a vehicle operated or occupied by the defendant; (2) the defendant was aware that the weapon was in the vehicle; and, (3) the defendant was carrying the weapon. *People v Nimeth*, 236 Mich App 616, 622; 601 NW2d 393 (1999). The elements may be met by drawing reasonable inferences from circumstantial evidence. *Id.*

Taken in a light most favorable to the prosecution, there was sufficient circumstantial evidence for the jury to convict defendant. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992); *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). Defendant was the passenger in a vehicle that was stopped for a routine equipment infraction. Instead of staying in the vehicle, defendant fled on foot. "[E]vidence of flight is admissible to show consciousness of guilt." *People v Compeau*, 244 Mich App 595, 598; 625 NW2d 120 (2001). In fact, defendant conceded that he attempted to flee and elude police, but explained that it was because he was "scared," since he was on probation. However, defendant failed to explain how his fear was at all justified, assuming that there was, in fact, no weapon in the car or that, if there was a weapon, it belonged to the mysterious third person. The weapon was found in an area in which defendant had been running. The weapon was dry, although it had rained recently. It was loaded with Winchester ammunition, and one of the two empty boxes of ammunition found in the backseat of the car was Winchester. Defendant also made statements following his arrest, which indicated that he had knowledge of the weapon. Finally, defendant had previously been arrested after police officers discovered a rifle in the trunk of the car that defendant was driving. Curiously, defendant was wearing body armor at the time and told the officers it was for protection because "you know how it is." Based on this prior conduct, the jury could reasonably infer that defendant had the intent to carry a firearm in the present case, presumably for protection.

Defendant's flight, his fingerprint on an ammunitions box in the back seat of the car, his statements to officers indicating a specific knowledge of the weapon involved, and defendant's history of being armed for protection all provide a reasonable basis for which the jury to conclude that defendant was guilty of CCW in a vehicle

¹ The nine-millimeter handgun discovered by the officer did not contain Hornady ammunition.

Defendant was also convicted of receiving or concealing a stolen firearm. MCL 750.535b(2) provides,

[a] person who receives, conceals, stores, barter, sells, disposes of, pledges, or accepts as security for a loan a stolen firearm or stolen ammunition, knowing that the firearm or ammunition was stolen, is guilty of a felony, punishable by imprisonment for not more than 10 years or by a fine of not more than \$5,000 or both.

Therefore, the elements of receiving or concealing stolen property are: (1) the defendant concealed a stolen firearm; and (2) the defendant knew or had reason to know it was stolen at the time he concealed it. *People v Nott*, 469 Mich 565, 593; 677 NW2d 1 (2004).

There was insufficient evidence to convict defendant of this crime beyond a reasonable doubt. Although as noted, there was sufficient evidence to prove that defendant concealed a firearm, nothing in the record provides even circumstantial evidence that defendant was aware, or should have been aware, that the firearm was stolen. Indeed, the only evidence was that the firearm was stolen soon after it was purchased by a Ms. Herroon, but nothing even suggests that defendant stole the firearm or otherwise knew or had reason to know it was stolen. On those slim facts, defendant's conviction for receiving stolen property cannot stand.

Defendant next argues that the trial court abused its discretion when it allowed the prosecutor to present evidence regarding his prior arrest. To be admissible under MRE 404(b), generally bad acts evidence: (1) must be offered for a proper purpose, (2) must be relevant, and (3) must not have a probative value substantially outweighed by its potential for unfair prejudice. *People v Knox*, 469 Mich 502, 509; 674 NW2d 366 (2004). A proper purpose is one other than establishing the defendant's character to show his propensity to commit the offense. *People v Vandervliet*, 444 Mich 52, 74; 508 NW2d 114 (1993), mod 445 Mich 1205; 520 NW2d 338 (1994). Defendant's theory of the case was that he was just one of three occupants of the car and that he had no knowledge of, and did not possess, the gun. The prosecutor used defendant's prior arrest to demonstrate defendant's intent to be armed for self-protection. The probative value of the evidence was not substantially outweighed by its potential for unfair prejudice.

Defendant also complains that the trial court failed to give a limiting instruction. Upon request, the trial court must provide a limiting instruction. *Knox*, 469 Mich at 509. Where, as here, there was no request or objection, the trial court was under no duty to give such an instruction. *People v Rice (On Remand)*, 235 Mich App 429, 444; 597 NW2d 843 (1999). In addition, the jury was admonished to limit consideration of the evidence during defense counsel's cross-examination of one of the arresting officers. We conclude that the trial court did not abuse its discretion in admitting the evidence, nor did it err in failing to provide a limiting instruction.

Defendant's conviction and sentence for carrying a concealed weapon in a car is affirmed, but we reverse defendant's conviction for receiving a stolen firearm, and remand for entry of an amended judgment.² We do not retain jurisdiction.

/s/ Pat M. Donofrio

/s/ Christopher M. Murray

² Defendant did not appeal his conviction and sentence for resisting arrest, MCL 750.81d(1).