

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MATTHEW WARREN DUNCAN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 65928

**FILED**

**JUN 26 2015**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal by Matthew Warren Duncan from a judgment of conviction for Carrying Concealed Firearm or Other Deadly Weapon, pursuant to NRS 202.350. Duncan contends there was insufficient evidence to support his conviction. This court concludes that sufficient evidence existed and thus affirms the conviction. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

*FACTUAL AND PROCEDURAL BACKGROUND*

On December 23, 2006, Officer Craig O'Neill of the Las Vegas Metropolitan Police Department was conducting traffic enforcement in the area of Tropicana Avenue and Ragona Drive. While looking for traffic violations, O'Neill saw a motorcycle traveling faster than the surrounding traffic. O'Neill followed the motorcyclist, who was later identified as Duncan, to an apartment complex. When O'Neill turned into the complex, he encountered Duncan directly and activated his emergency lights and siren. Duncan did not stop and a chase ensued. However, O'Neill stopped the chase to avoid potential danger and broadcast a message about Duncan to his radio dispatcher.

Patrol Sergeant Bobby Smith heard O'Neill's message, witnessed Duncan drive past him, and pursued. During the pursuit,

Smith noticed that Duncan wore a jacket, gloves, and helmet. Smith did not see any weapons on Duncan's person and could not view Duncan's waist because Duncan's jacket covered this area, an observation supported by other police testimony. Duncan soon crashed his motorcycle in the area of Sunset Drive and Hualapai Way, fell off his motorcycle, and attempted to flee on foot. By the time the police captured Duncan, he no longer wore his jacket, helmet, or gloves. The police subsequently found these items, along with a handgun,<sup>1</sup> a belt with matching holster, and other possessions, at a nearby construction site. Duncan admitted to owning the handgun and holster, as well as burying the handgun in the dirt of the site when he ran from the police.

After Duncan's arrest, he was ultimately charged by way of Amended Information with one count of Stop Required on Signal of Police Officer and one count of Carrying Concealed Firearm or Other Deadly Weapon. The case proceeded to trial by jury, and Duncan was found guilty on both counts. The district court sentenced Duncan to a term of 19 to 48 months for Count 1 and 12 to 30 months for Count 2, consecutive to Count 1. In addition, the court suspended Duncan's sentence and placed him on probation, under certain conditions, for three years. This appeal followed.

#### *ANALYSIS*

On appeal, Duncan only challenges the Carrying Concealed Firearm or Other Deadly Weapon conviction, arguing there was insufficient evidence to support it. We affirm Duncan's conviction.

---

<sup>1</sup>The handgun was a Glock Model 31, .357 caliber, and it was loaded with ammunition. Duncan possessed a registration card for the handgun, but he did not have a concealed weapons permit.

Duncan argues the evidence at trial failed to prove the crime of Carrying Concealed Firearm or Other Deadly Weapon beyond a reasonable doubt. According to Duncan, simply because the police officers did not see him with a handgun during the pursuit does not automatically mean that he carried a concealed firearm.<sup>2</sup>

Evidence is sufficient if “after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Thompson v. State*, 125 Nev. 807, 816, 221 P.3d 708, 715 (2009) (internal quotation marks omitted). The verdict of a jury will not be overturned when substantial evidence exists to support it, and substantial evidence is defined as “evidence that a reasonable mind might accept as adequate to support a conclusion.” *Id.* (internal quotation marks omitted). Even circumstantial evidence alone can support a conviction. *Deveroux v. State*, 96 Nev. 388, 391, 610 P.2d 722, 724 (1980). Moreover, it is for the jury to determine the degree of weight and credibility to give to witness testimony and other trial evidence. *Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

We conclude that a reasonable and rational jury could have found the elements of Carrying Concealed Firearm or Other Deadly

---

<sup>2</sup>Duncan does not appear to dispute the fact that his handgun qualifies as a firearm or deadly weapon. Duncan also does not dispute the fact that he carried a firearm, only that this firearm was not concealed. Further, Duncan admitted that he owned the handgun and buried it while fleeing from the police. Accordingly, the only element in dispute is whether the firearm was concealed.

Weapon, pursuant to NRS 202.350,<sup>3</sup> beyond a reasonable doubt. The State presented more than substantial evidence that Duncan concealed the firearm he carried around his waist. For instance, during trial, there was repeated testimony that no officers could see a weapon on Duncan's person. In particular, O'Neill and Smith testified that they could not view Duncan's waist area due to the jacket he wore.

Beyond the testimony of the police officers, Duncan's possessions, including his jacket, holster, and handgun, at the time of his arrest were also presented to the jury. The question of whether Duncan's clothing covered the handgun to the extent that the firearm was not discernible by ordinary observation was properly left to the members of the jury, who were presented with sufficient witness testimony and other trial evidence. After viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *See Huebner v. State*, 103 Nev. 29, 31, 731 P.2d 1330, 1332 (1987) (noting that the defendant's conviction was supported, in part, by evidence that the defendant's jacket concealed the location where the weapon was clipped on his belt).<sup>4</sup>

---

<sup>3</sup>NRS 202.350(1)(d)(3) provides that a person shall not "[c]arry concealed upon his or her person any . . . [p]istol, revolver or other firearm, or other dangerous or deadly weapon . . ." A firearm is concealed if it is not "discernible by ordinary observation." NRS 202.350(8)(a).

<sup>4</sup>Similarly, other courts have concluded that evidence of a defendant's jacket covering the weapon can support a conviction for carrying a concealed weapon. *See State v. Baker*, 639 S.W.2d 617, 618 (Mo. Ct. App. 1982) (the defendant's jacket covered a pistol); *Holtzendorf v. State*, 247 S.E.2d 599, 600 (Ga. Ct. App. 1978) (the defendant's jacket covered a pistol, which was also "stuck in his pants or pants belt").

Accordingly, substantial evidence exists to support Duncan's conviction of Carrying Concealed Firearm or Other Deadly Weapon.

We therefore,

ORDER the judgment of conviction is AFFIRMED.



Gibbons

C.J.



Tao

J.



Silver

J.

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk