

ANSWER TO QUESTION NO. 6

Dan and Dave Defendant are charged with carrying a concealed weapon. When a defendant is charged with carrying a concealed weapon in a vehicle, the prosecution must prove each of the following elements beyond a reasonable doubt:

1. That the instrument or item was indeed a dangerous weapon, in this case a gun.
2. That the dangerous weapon was in a vehicle that defendant was in.
3. That the defendant knew the instrument was in the vehicle.

And,

4. That the defendant took part in carrying or keeping the dangerous weapon in the vehicle. CJI2d, 11.2.

1. The Charges Asserted Against Dave: Dave may argue that the prosecutor cannot present evidence to establish the third and fourth elements of this offense. At the time Dave began to drive his car, he was wholly unaware that there were any guns in his car. Dan placed the guns in the car. The facts indicate that "Dan did not tell Dave that he had placed the guns in his car because Dan knew that Dave, who was on probation at the time, would not allow Dan to possess any weapon in his car." The prosecution may argue that because the guns were found in Dave's car he should be found to have constructive knowledge that they were there. See *People v Gould*, 225 Mich App 79, 87 (1997). Moreover, there is no question that Dave knew Dan had at least one gun in the car as the facts indicate that shortly after Dave drove away from their home, Dan pulled out a gun and told Dave "I hope we won't need to use this."

Dave may also argue that even if the prosecution successfully establishes that he knew that at least one gun was in his car, the prosecution will have a very difficult time establishing the fourth element of this offense -- that "defendant took part in carrying or keeping the dangerous weapon in the vehicle." Dan placed the guns in the car without notice to Dave and Dave did not become aware of the presence of even one gun in his car until just before the police stopped his car. The undisputed facts also show that while Dan placed the gun in the car for possible use by Dave, Dave was never aware of the gun under the driver seat of his car until the police discovered it in a search of the car. Dan's intent cannot be transferred to Dave. Dave may argue that these facts are simply not enough to establish that he took part in carrying or keeping

the dangerous weapon in his car. The prosecution will argue, however, that even momentary innocent possession of a concealed weapon is not a defense to a charge of carrying a concealed weapon. *People v Hernandez-Garcia*, 477 Mich 1039 (2007). The jury will have to determine whether Dave, who was trying to assist his brother to avoid a lethal and possibly fatal confrontation with a criminal aggressor and who was wholly unaware of Dan's activities until just moments before the police stopped his vehicle, can be found to have taken part in his brother's scheme to carry and keep dangerous weapons in Dave's car.

2. The Charges Asserted Against Dan: By contrast, Dan will have a much more difficult time establishing a defense. The facts clearly establish that Dan knowingly possessed a gun in the car and that Dan was the primary and sole person responsible for placing, carrying and keeping the gun in Dave's car. In short, the prosecutor has sufficient evidence to establish a prima facie case against Dan. The facts suggest that Dan was motivated by his very legitimate concern for his safety, as Andy Aggressor had threatened his life and had taken steps toward carrying out this threat. While self-defense is often a legal defense available to criminal acts, self-defense is not a defense to the charge of carrying a concealed weapon. *People v Townsel*, 13 Mich App 600 (1968).