STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant, v CLEOPHAS ANDREW BROWN, Defendant-Appellee.	FOR PUBLICATION October 15, 2019 9:10 a.m. No. 348079 Oakland Circuit Court LC No. 2018-266476-FH

Before: METER, P.J., and O'BRIEN and SWARTZLE, JJ.

PER CURIAM.

The prosecution appeals by leave granted[1] the trial court's opinion and order granting defendant's motion to dismiss his carrying a concealed weapon (CCW) charge, MCL 750.227(2). We reverse.

I. FACTS

Defendant received a concealed pistol license (CPL) on August 6, 2013. On August 30, 2013, defendant was arrested and charged with operating while intoxicated (OWI). On September 12, 2013, the Oakland County Gun Board (the Board) issued a written notice to defendant informing him that his CPL "is SUSPENDED" because of the OWI charge. The letter requested that defendant attend a November 19, 2013 meeting of the Board where they would discuss the suspension. On October 29, 2014, defendant's OWI charge was dismissed without prejudice, but was later reinstated on November 5, 2014. Defendant chose not to appear at the November 19, 2013 meeting, where the Board unanimously voted to uphold the suspension of defendant's CPL. Defendant was eventually convicted of OWI on May 20, 2015. Because of this conviction, the Board revoked defendant's CPL on June 6, 2015.

[1] *People v Brown*, unpublished order of the Court of Appeals, entered June 14, 2019 (Docket No. 348079).

On November 24, 2017, at approximately 6:00 p.m., Oakland County Sheriff Deputies Robert Elinski and Eric Rymarz were dispatched to a scene involving a motor vehicle accident and OWI investigation. After identifying defendant as the individual involved in the accident, Deputies Elinski and Rymarz were informed that defendant had a pistol in his possession and did not possess a valid CPL. Deputy Elinski ran a Law Enforcement Information Network (LEIN) search on defendant's CPL status, which confirmed that his CPL had been revoked. Defendant was arrested at the scene. A few days later, Deputy Rymarz contacted the Oakland County Clerk's Office about defendant's CPL, and received a fax of a LEIN entry dated November 24, 2017, and time-stamped 6:02 p.m., which provided, in relevant part:

> 11/24/17 | 18:02:37.72 | LGWCCW | NOTICE OF REVOKED CPL LICENSE BY PEACE OFFICER.
>
> * * *
>
> REVOKED LICENSE TO CARRY A CONCEALED PISTOL (CPL)
>
> THIS INDIVIDUAL IS NOT ELIGIBLE TO CARRY A CONCEALED PISTOL.
>
> LICENSE REVOCATION DATE: 06/06/2015
>
> ***SERVED VERBAL NOTICE OF REVOKED CPL LICENSE BY PEACE OFFICER.

Defendant was eventually charged with three crimes stemming from the November 24, 2017 arrest: (1) CCW, MCL 750.227; (2) OWI, second offense, MCL 257.625; and (3) possessing a firearm while under the influence, MCL 750.237(2). Defendant filed a motion to dismiss the CCW charge, arguing that he could not be held criminally liable for CCW because he did not receive written notice that his CPL had been revoked as required by the concealed pistol licensing act (CPLA), MCL 28.421 *et seq*. Defendant also contended that the LEIN entry was inconclusive in establishing whether defendant actually received verbal notice of his CPL's revocation before November 24, 2017. The prosecution argued in response that the LEIN entry demonstrated that defendant was served with verbal notice of his CPL's revocation before his November 24, 2017 arrest, and that verbal notice was sufficient under the CPLA. The trial court granted defendant's motion to dismiss the CCW charge, holding that defendant could not be "criminally liable for CCW" because the prosecution "failed to produce evidence that conclusively demonstrates that Defendant received notice . . . that his CPL was suspended or revoked." The trial court explained that verbal notice that defendant's CPL was revoked was insufficient under the CPLA, and that the LEIN entry was also inadequate.

II. INTERPLAY BETWEEN THE CCW STATUTE AND THE CPLA

A. PRESERVATION OF THE ISSUE AND STANDARD OF REVIEW

On appeal, the prosecution argues that the trial court erred in dismissing the CCW charge because defendant was not required to have notice that his CPL was revoked in order for the prosecution to prove CCW. The prosecution failed to raise this issue in the trial court, but it

raised the issue in its application for leave to appeal, and this Court granted leave for "the issues raised in the application . . . ." *People v Brown*, unpublished order of the Court of Appeals, entered June 14, 2019 (Docket No. 348079). At any rate, "[a]lthough this issue is unpreserved because [the prosecution] failed to raise it below, we may still consider it because it involves a question of law and the facts necessary for its resolution have been presented." *Poch v Anderson*, 229 Mich App 40, 52; 580 NW2d 456 (1998). See also *People v Houston*, 237 Mich App 707, 712; 604 NW2d 706 (1999).

This Court reviews "a trial court's decision on a motion to dismiss charges against a defendant for an abuse of discretion." *People v Nicholson*, 297 Mich App 191, 196; 822 NW2d 284 (2012). "A trial court necessarily abuses its discretion when it makes an error of law." *People v Waterstone*, 296 Mich App 121, 132; 818 NW2d 432 (2012). Questions of law, which include questions of statutory interpretation, are reviewed de novo. *People v Pinkney*, 501 Mich 259, 267; 912 NW2d 535 (2018).

B. ANALYSIS

Defendant was charged with CCW under Michigan's CCW statute, MCL 750.227. To rule on the question before us, we must decide whether MCL 750.227 requires the prosecution to prove that the defendant had notice that he was not allowed to carry a concealed pistol. MCL 750.227 provides, in relevant part:

> (2) 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, except in his or her dwelling house, place of business, or on other land possessed by the person, without a license to carry the pistol as provided by law and if licensed, shall not carry the pistol in a place or manner inconsistent with any restrictions upon such license.

In *People v Combs*, 160 Mich App 666, 673; 408 NW2d 420 (1987), this Court explained the prosecution's burden for proving CCW:

> Carrying a concealed weapon is a general intent crime. The only intent necessary is an intent to do the act prohibited, to knowingly carry the weapon on one's person or in an automobile. While a person may be exempted from criminal liability for carrying a concealed weapon if he is licensed to do so, the language in the statute "without a license so to carry said pistol as provided by law" does not add an element to the crime. Here, the evidence established that defendant knowingly carried the revolver in his automobile. Since defendant did not sustain his burden of showing that he was in fact properly licensed to carry the weapon, no further proofs were required of the prosecution to sustain defendant's conviction. [Some quotation marks and citations omitted.]

Combs suggests that the prosecution is not required to prove as an element of CCW that defendant had notice that his CPL had been revoked. To support a charge of CCW, the prosecution need only show that the defendant knowingly carried the pistol in an automobile or on his or her person; if a defendant then wishes to avoid the CCW charge based on a CPL, the

burden shifts to the defendant to prove that he or she was "properly licensed to carry the weapon[.]" *Id*. at 673. That the prosecution need not prove as an element of CCW that defendant had notice that his CPL was revoked is buttressed by our Supreme Court's discussion in *People v Quinn*, 440 Mich 178, 189; 487 NW2d 194 (1992), where the Court recognized "that the prosecution need not prove as an element of the offense of carrying a concealed weapon that the defendant knew his [CPL] was expired."[2] Based on the foregoing, it is clear that, to prove CCW, the prosecution was not required to show that defendant had notice that his CPL was revoked. The trial court therefore erred as a matter of law when it held that defendant was "not criminally liable for CCW" because the prosecution "failed to produce evidence that conclusively demonstrates that Defendant received notice . . . that his CPL was suspended or revoked." Because this error of law was the basis for the trial court's dismissal of defendant's CCW charge, the dismissal was necessarily an abuse of discretion. *Waterstone*, 296 Mich App at 132.

Defendant argues that he should not be held criminally liable for the CCW charge because, under the doctrine of *in pari materia*, the notice provisions in the CPLA should be construed together with the CCW statute. We disagree.

Under the doctrine of *in pari materia*, "statutes that relate to the same subject or that share a common purpose should, if possible, be read together to create a harmonious body of law." *People v Mazur*, 497 Mich 302, 313; 872 NW2d 201 (2015). But where "the Legislature has chosen to specifically limit the applicability of a statutory definition, the doctrine of *in pari materia* is inapplicable." *People v Feeley*, 499 Mich 429, 444; 885 NW2d 223 (2016).

The relevant provisions of the CPLA deal with the rules and procedures governing the issuance, suspension, revocation, and reinstatement of CPLs, and the penalty for violating an order that suspends or revokes an individual's CPL. See MCL 28.428(7) and (8).[3] They

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[2] We recognize that this principle of law was "not essential to [the] determination of" *Quinn*, and therefore was likely nonbinding obiter dictum. *Roberts v Auto-Owners Ins Co*, 422 Mich 594, 597; 374 NW2d 905 (1985). Nonetheless, we find this dictum persuasive, particularly because the *Quinn* Court classified it as a "[f]amiliar contemporary example[]" of when "[t]he Legislature may impose certain penalties regardless . . . of what the actor actually knew or did not know." *Quinn*, 440 Mich at 188.

[3] At all times relevant to this case, MCL 28.428(7) and (8) provided:

> (7) A suspension or revocation order or amended order issued under this section is immediately effective. However, an individual is not criminally liable for violating the order or amended order unless he or she has received notice of the order or amended order.
>
> (8) If an individual is carrying a pistol in violation of a suspension or revocation order or amended order issued under this section but has not previously received notice of the order or amended order, the individual shall be informed of the order or amended order and be given an opportunity to properly

provide, in pertinent part, that an individual cannot be criminally liable for violating the CPLA if the individual did not receive notice that his or her CPL had been suspended or revoked. MCL 28.428(7) and (8). The CCW statute, on the other hand, makes a person criminally liable for CCW if he or she carries a concealed pistol "without a license to carry the pistol as provided by law[.]" MCL 750.227(2).

Defendant argues that the phrase "as provided by law" in MCL 750.227(2) refers to the licensing procedures in MCL 28.428, and that the exemption from criminal liability for lack of notice in MCL 28.428(7) and (8) applies to criminal liability under MCL 750.227(2). While the CPLA and CCW statutes refer to the same subject matter (carrying concealed weapons), it is clear that the Legislature chose to limit the applicability of CPLA's criminal exemptions. The CPLA and the CCW statutes are in separate codes of the Michigan Compiled Laws. MCL 28.428(7) states that "an individual is not criminally liable *for violating the order or amended order*" that suspended or revoked their CPL, and MCL 28.428(8) states that an individual must be given notice that their CPL was suspended or revoked "before an arrest is made for carrying the pistol *in violation of this act*." (Emphasis added).[4] Nothing in the CPLA suggests that the Legislature intended to expand the applicability of its provisions to other portions of the Michigan Compiled Laws. Likewise, nothing in the CCW statute suggests that the Legislature intended to incorporate MCL 28.428's exemptions from criminal liability into the Michigan Penal Code, where the CCW statute is located. The Michigan Penal Code provides numerous exemptions to criminal liability for CCW. See, e.g., MCL 750.231; MCL 750.231a. Nowhere do these exemptions reference MCL 28.428, nor does the Penal Code otherwise exempt a person from criminal liability for CCW if the individual did not receive notice that their CPL had been suspended or revoked. It is therefore clear that the Legislature chose to limit the applicability of MCL 28.428's exemptions from criminal liability solely to criminal liability under the CPLA, and, thus, "the doctrine of *in pari materia* is inapplicable." *Feeley*, 499 Mich at 444. Because the doctrine of *in pari materia* is inapplicable, we decline to make the notice requirement in the

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> store the pistol or otherwise comply with the order or amended order before an arrest is made for carrying the pistol in violation of this act.

The Legislature has since amended the statutory scheme addressing CPLs. See 2015 PA 3, effective December 1, 2015; 2015 PA 207, effective December 1, 2015; 2017 PA 95, effective October 11, 2017. All references to MCL 28.428 in this opinion refer to the version of MCL 28.428 in effect before these amendments.

[4] MCL 28.428(4) provides the criminal penalty for violating an order suspending or revoking a CPL, stating in relevant part:

> The licensee shall promptly surrender his or her license to the county clerk after being notified that his or her license has been revoked or suspended. An individual who fails to surrender a license as required under this subsection after he or she was notified that his or her license was suspended or revoked is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $500.00, or both.

CPLA an element of CCW. See *People v Kern*, 288 Mich App 513, 522; 794 NW2d 362 (2010) (explaining that a court may not add a provision to a statute that the Legislature saw fit to omit).

III. NOTICE

The prosecution alternatively argues that even if it was required to show that defendant had notice that his CPL was revoked or suspended in order to prove CCW, the evidence provided below demonstrated that defendant was served with adequate notice that he could not legally possess a concealed pistol before his November 24, 2017 arrest for CCW. We agree.

A. STANDARD OF REVIEW

This Court reviews "a trial court's decision on a motion to dismiss charges against a defendant for an abuse of discretion." *Nicholson*, 297 Mich App at 196. "A trial court may be said to have abused its discretion only when its decision falls outside the range of principled outcomes." *Id*. A trial court's factual findings are reviewed for clear error. *People v Antwine*, 293 Mich App 192, 194; 809 NW2d 439 (2011). "A finding of fact is clearly erroneous if, after a review of the entire record, an appellate court is left with a definite and firm conviction that a mistake has been made." *Id*. (quotation marks and citation omitted).

B. ANALYSIS

Under MCL 28.428(7) and (8), an individual cannot be criminally liable or otherwise arrested for carrying a pistol in violation of an order suspending or revoking the individual's CPL unless the individual received notice of the suspension or revocation. The LEIN entry, dated November 24, 2017, stated that defendant's CPL was revoked on June 6, 2015, and that a peace officer served defendant with verbal notice of his CPL's revocation. The trial court held that this "verbal notice was insufficient." Yet nothing in MCL 28.428 states *how* an individual must be notified that his or her CPL has been revoked or suspended, only that the individual receive notice. Therefore, the trial court erred in holding that verbal notice was insufficient under MCL 28.428.

But even overlooking this legal error, the prosecution produced evidence establishing that MCL 28.428's notice requirement was otherwise satisfied. The relevant statutory provisions provide that an individual cannot be criminally liable for carrying a concealed pistol unless the individual received notice that their CPL was revoked or suspended. The uncontested evidence showed that defendant received written notice that his CPL was suspended, and nothing suggests that defendant had reason to believe that this suspension was lifted.

Defendant was sent a letter on September 12, 2013, informing him that his CPL was suspended because of his August 30, 2013 OWI charge. The letter requested that defendant appear before the Board on November 19, 2013. While that OWI charge was dismissed without prejudice on October 29, 2014, the charge was refiled on November 5, 2014. At the November 19, 2013 meeting, which defendant chose not to attend, the Board confirmed that defendant's CPL was suspended because of the August 30, 2013 OWI charge. Thus, the evidence confirms

that defendant received notice that his CPL was suspended. No evidence in the record suggests that defendant had reason to believe his CPL was reinstated.[5] Thus, when defendant was arrested on November 24, 2017, he had no reason to believe that he could legally carry a concealed pistol. Accordingly, even if the CPLA required the prosecution to establish as an element of CCW that defendant received notice that his CPL had been revoked or suspended, the uncontested evidence confirms that defendant received notice that his CPL was suspended. Thus, the exemptions from criminal liability in MCL 28.428 do not apply, and the trial court erred by holding otherwise.

IV. CONCLUSION

Reversed and remanded. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Colleen A. O'Brien
/s/ Brock A. Swartzle

[5] In his motion to dismiss, defendant asserted that, "upon information and belief," after the first OWI charge was dismissed on October 29, 2014, the county clerk's office informed him "that his CPL would be reinstated." Defendant also asserted that, "[u]pon information and belief," the November 24, 2017 incident "was the first time that [defendant] was given any notice that his CPL was revoked," since he did not receive any communication from the Board "despite [defendant]'s multiple requests." However, defendant's assertions in his motion are not based on actual evidence, such as testimony, affidavit, documentation, or otherwise. See *People v Meissner*, 294 Mich App 438, 458; 812 NW2d 37 (2011) (stating that parties' arguments are not evidence).

But even accepting as true defendant's assertions in his motion, he does not contend that he believed that his CPL's suspension was, in fact, lifted. At best, he was aware that his CPL had been suspended and was unsure whether that suspension had been lifted, so he repeatedly tried to contact the Board for clarification, which he never received. Thus, he had no reason to believe that his CPL was not still, at the very least, suspended at the time of his November 2017 arrest.