STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN METCALF,

Defendant-Appellant.

UNPUBLISHED
August 21, 1998

No. 203712
Recorder's Court
LC No. 96-007177

Before: Corrigan, C.J., and MacKenzie and R. P. Griffin*, JJ.

PER CURIAM.

Defendant appeals by right his conviction following a bench trial of carrying a concealed weapon, MCL 750.227; MSA 28.424. The trial court enhanced defendant's sentence as a fourth habitual offender, MCL 769.12; MSA 28.1084, and sentenced him to a term of imprisonment of 2 ½ to 5 years. We affirm.

On the evening of September 2, 1996, defendant, while carrying a handgun, confronted a group of people gathered outside the home of Yvette Morgan in Detroit. Approximately ten minutes later, police officers responding to a report of an African American man with a gun in an older model car, observed defendant, who fit the general description, drive toward them near the street address to which they were dispatched. The officers directed defendant and another motorist who fit the description to stop. As they approached defendant's stopped car, the officers observed defendant lean toward his car's glove box. Officer Steve Perry then requested that defendant produce his driver's license and automobile registration. As defendant searched for the documents, Morgan approached Officer Perry and informed him that defendant had a gun in the glove box of his car. Officer Perry arrested defendant when he failed to produce his identification and registration. Perry discovered a loaded .44 Magnum handgun in the glove box during his subsequent search of defendant's car.

I

Defendant first contends that the trial court clearly erred in denying his motion to suppress the evidence discovered during the search of his car on the ground that the police did not have probable

*Former Supreme Court justice, sitting on the Court of Appeals by assignment.

cause to arrest him. We disagree. This Court will not reverse a trial court's decision on a motion to suppress unless it is clearly erroneous. *People v Peebles*, 216 Mich App 661, 664; 550 NW2d 589 (1996). A decision is clearly erroneous if we are left with a definite and firm conviction that a mistake has been made. *People v Muro*, 197 Mich App 745, 747; 496 NW2d 401 (1993).

The trial court must suppress evidence obtained from a suspect as a result of an illegal arrest. *People v Dalton*, 155 Mich App 591, 597; 400 NW2d 689 (1986). A warrantless arrest, such as involved in this case, must be supported by probable cause. *People v Romano*, 181 Mich App 204, 216; 448 NW2d 795 (1989).

> Probable cause to arrest exists where the facts and circumstances within an officer's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed. [*People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996).]

Here, the officers lawfully stopped defendant's car for investigative purposes because he fit the description of the perpetrator of a crime that allegedly occurred in the immediate area ten minutes earlier. *People v Yeoman*, 218 Mich App 406, 409-411; 554 NW2d 577 (1996). Officer Perry properly asked defendant for his driver's license and motor vehicle registration after stopping defendant's car. MCL 257.311; MSA 9.2011, MCL 257.223; MSA 9.1923. When defendant failed to produce either document, Officer Perry lawfully arrested him for operating a motor vehicle without a license, MCL 257.301(1); MSA 9.2001(1), MCL 257.901; MSA 9.2601, because defendant committed a misdemeanor offense in the officer's presence. MCL 764.15(1)(a); MSA 28.874(1)(a); *People v Boykin*, 31 Mich App 681, 684; 188 NW2d 100 (1971). Officer Perry then permissibly searched the glove box of defendant's car after lawfully arresting him. *People v Catanzarite*, 211 Mich App 573, 580-581; 536 NW2d 570 (1995), citing *New York v Belton*, 453 US 454, 458-460; 101 S Ct 2860; 69 L Ed 2d 768 (1981). The requirement under MCL 780.581(1); MSA 28.872(1)(1) that the arresting officer take a person arrested for a misdemeanor offense before a magistrate "without unnecessary delay" to post bail does not deprive the officer of the right to search the passenger compartment of a vehicle pursuant to a lawful arrest. *People v Poole*, 199 Mich App 261, 264; 501 NW2d 265 (1993).

II

Defendant next argues he is entitled to reversal of his conviction because the trial court clearly erred in finding that he drove his car with knowledge that the car contained a dangerous weapon. We disagree.

We initially note that this Court does not apply a heightened standard to determine whether sufficient evidence existed to support a conviction in a bench trial.[1] *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985); *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995). Over twenty years ago, our Supreme Court observed in *People v Garcia*, 398 Mich 250, 262-263; 247 NW2d 547 (1976) (3-2 decision):

> In a bench trial, it is the role of the trial judge sitting as the trier of fact to observe the witnesses and decide the weight and credibility to be given to their testimony. Where sufficient evidence exists to sustain a verdict of guilty beyond a reasonable doubt, the decision of the judge should not be disturbed by an appellate court. The task of the reviewing court must be to examine the record to determine whether the evidence was ample to warrant a verdict of guilty beyond a reasonable doubt of the crime charged.

Although the trial court must make factual findings in support of its verdict, MCR 6.403, the purpose of this requirement is to create a record that demonstrates that the trial court was aware of the issues in the case and correctly applied the law, not to facilitate the application of a different standard of appellate review than that employed in jury trials. *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992). Because the trial court's findings in this case reveal that it was aware of the issues and correctly applied the law, compare *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988), we limit our review to determining whether sufficient evidence existed to support the verdict.

In reviewing the sufficiency of the evidence in a bench trial, this Court views the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could find the essential elements of the crime proven beyond a reasonable doubt. *Hutner, supra* at 282. To support a conviction of carrying a dangerous weapon in a vehicle under MCL 750.227; MSA 28.424, the prosecution must prove: (1) the presence of the weapon in a vehicle operated or occupied by the defendant, (2) that the defendant knew or was aware of its presence, and (3) that the defendant was "carrying" the weapon. *People v Courier*, 122 Mich App 88, 90; 332 NW2d 421 (1982). The trier of fact may not automatically infer that the defendant carried the weapon from evidence that he had knowledge of its presence in the vehicle. *People v Emery*, 150 Mich App 657, 667; 389 NW2d 472 (1986). The defendant's awareness, however, is a factor to consider in determining whether circumstantial evidence establishes the carrying element. *Id.* Other factors include:

> (1) the accessibility or proximity of the weapon to the person of the defendant; (2) the defendant's possession of items which connect him to the weapon, such as ammunition; (3) the defendant's ownership or operation of the vehicle; and (4) the length of time during which the defendant drove or occupied the vehicle. [*Id.*]

In this case, the prosecution presented sufficient evidence to support the conviction. The police officers testified that they observed defendant lean toward the glove box after they ordered him to stop his car. Witnesses Gary Watts and Dena Pearson identified the gun discovered in defendant's glove box as the one defendant possessed when he confronted the group of people near Morgan's house shortly before his arrest. A rational trier of fact could find on the basis of this evidence that defendant operated a car knowing that it contained a dangerous weapon and that defendant "carried" the weapon. It was for the trier of fact to weigh this evidence against the testimony of defendant, his fiancee, and other witnesses that defendant was neither operating nor occupying the car when the police officers arrived on the scene. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1201 (1992).

III

We reject defendant's contention that the trial court violated his rights to due process and the equal protection of the law because it did not convict him as a fourth habitual offender. The habitual offender statute does not establish substantive crimes, but rather is a sentence enhancement mechanism. *People v Zinn*, 217 Mich App 340, 345; 551 NW2d 704 (1996). A defendant is not entitled to a jury trial regarding his status as an habitual offender and the prosecutor need not prove him guilty beyond a reasonable doubt. *Id.* at 347. Rather, under MCL 769.13(5); MSA 28.1085(5), the trial court must determine the existence of the defendant's prior convictions at sentencing or at a separate hearing for that purpose before sentencing. *Id.* at 345. The existence of a prior conviction may be established by any evidence that is relevant for that purpose, including information contained in the presentence report. MCL 769.13(5)(c); MSA 28.1085(5)(c); *People v Green*, 228 Mich App 684, 700; __ NW2d __ (1998). Here, the presentence report listed defendant as a fourth habitual offender and included details of defendant's prior felony convictions. This information is presumed accurate because defendant did not challenge its accuracy below. *People v Grant*, 455 Mich 221, 233-234; 565 NW2d 389 (1997). The trial court properly relied on this uncontested information to sentence defendant as an habitual offender. *Id.*; *Green*, *supra* at 700.

Affirmed.

/s/ Maura D. Corrigan
/s/ Barbara B. MacKenzie
/s/ Robert P. Griffin

[1] Before *People v Petrella*, 424 Mich 221; 380 NW2d 11 (1985), this Court had held that the proper standard of review in a bench trial was for clear error. *People v Hubbard*, 19 Mich App 407, 413; 172 NW2d 831 (1969), aff'd 387 Mich 294 (1972). This Court similarly held that it must review the trial court's findings of fact to support its verdict under the clearly erroneous standard. *People v Bruce Ramsey*, 89 Mich App 468, 473-475; 280 NW2d 565 (1979); see e.g. *People v Snell*, 118 Mich App 750, 755; 325 NW2d 563 (1982), and *People v Anderson*, 112 Mich App 640, 648; 317 NW2d 205 (1981). The Michigan Supreme Court, however, rejected the clear error standard in *Petrella*, *supra* at 269. Unfortunately, this Court has perpetuated a misunderstanding of the standard of review by continuing to apply the incorrect clear error standard after *Petrella*. E.g. *People v Reeves*, 222 Mich App 32, 35; 564 NW2d 476 (1997), rev'd on other grounds __ Mich __ (1998), *People v Lyles*, 148 Mich App 583, 594; 385 NW2d 676 (1986), and *People v Eggleston*, 149 Mich App 665, 667; 386 NW2d 637 (1986).