

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

VINCENT LAWRENCE HOLMAN,

Defendant-Appellant.

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UNPUBLISHED

February 7, 1997

No. 182847

Recorder's Court

LC No. 93-005530

Before: Bandstra, P.J., and Neff and M.E. Dodge,\* JJ.

PER CURIAM.

Defendant appeals as of right his conviction following a bench trial of carrying a concealed weapon ("CCW"), MCL 750.227; MSA 28.424. Defendant was sentenced to two years' probation. We affirm.

Defendant first argues that the trial court erred in denying his motion to suppress the gun that was seized from his car because the officers did not have a reason to stop defendant's car, as is evidenced by the officers' failure to issue him a traffic ticket. We disagree. The trial court's decision following a suppression hearing will not be reversed unless it is clearly erroneous. *People v Burrell*, 417 Mich 439, 448; 339 NW2d 403 (1983). A decision is clearly erroneous if, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made. *People v Chambers*, 195 Mich App 118, 121; 489 NW2d 168 (1992).

The trial court properly denied defendant's motion to suppress. After hearing the testimony of defendant and the police officers, which conflicted regarding whether defendant committed traffic violations prior to being stopped, the court chose to believe the police officers' testimony. The credibility of a witness' testimony is a matter for the trier of fact to decide, *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988), and we give deference to such credibility determination especially where testimonies conflict, *People v Crowell*, 186 Mich App 505, 507-508; 465 NW2d 10

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\* Circuit judge, sitting on the Court of Appeals by assignment.

(1990), remanded on other grounds 437 Mich 1004; 469 NW2d 305 (1991). The police officers testified that they stopped defendant for committing several moving violations. Both officers observed defendant exit a gas station at a high rate of speed. As well, both officers noted that defendant failed to yield to oncoming traffic when he left the gas station. After observing defendant commit these two traffic violations, the officers pursued defendant. The fact that no traffic tickets were issued is irrelevant. The incident escalated from an ordinary and justifiable traffic stop to a possible felony in progress when the officers discovered the gun in the car. In light of the fact that defendant was arrested on a CCW charge, the officers' failure to issue tickets on two traffic violations is understandable.

Next, defendant argues that there was insufficient evidence to support his conviction because the gun was not concealed and because there was no evidence that the gun was operable. We disagree. In a challenge to a conviction based on the sufficiency of the evidence presented, we must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that all the elements of the crime charged were proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985). In order to support a conviction of CCW in a motor vehicle, the prosecution must produce evidence that a weapon was present in a vehicle operated or occupied by the defendant, that the defendant knew of the presence of the weapon, and that defendant was "carrying" the weapon. *People v Emery*, 150 Mich App 657, 665; 389 NW2d 472 (1986); *People v Courier*, 122 Mich App 88, 90; 332 NW2d 421 (1982). There is no requirement that the weapon be concealed within the vehicle. The statute itself states "concealed or otherwise." The act of carrying the weapon in a vehicle is, by itself, violative of the pertinent subsection. MCL 750.227(2); MSA 28.424(2). Here, there was evidence that defendant was operating the vehicle in which the weapon was found, knew the weapon was there, was carrying the gun in his bag, and did not have a license to carry the gun. Thus, when looking at the evidence in a light most favorable to the prosecution, there was sufficient evidence to support defendant's CCW conviction. MCL 750.227(2); MSA 28.424(2); *Courier*, *supra* at 90-91. Although defendant asserts that his conviction cannot stand because there was no evidence that the gun was operable, defendant failed to meet his burden of presenting evidence to show that the gun was inoperable. *People v Parr*, 197 Mich App 41, 45; 494 NW2d 768 (1992); *People v Gardner*, 194 Mich App 652, 655-656; 487 NW2d 515 (1992).

Defendant also contends that a warrant was required to search his car as it was parked on private property. We disagree. The location of defendant's car, whether in a private parking spot, a public parking area, or in the alley adjacent to the building, is irrelevant. The automobile exception to the warrant requirement applied in this case, and the officers properly conducted a warrantless search of defendant's car. *People v Anderson*, 166 Mich App 455, 478-479; 421 NW2d 200 (1988). As well, defendant was validly stopped for a traffic violation, and the officers had a legitimate reason for being at the parking spot. Thus, the gun, which was in plain view, was properly seized. *People v Jordan*, 187 Mich App 582, 588; 468 NW2d 294 (1991). Furthermore, even if the car was parked in a private spot behind the building, defendant had no expectation of privacy that would require the issuance of a warrant because the car was exposed to public view. See *People v Tate*, 134 Mich App 682, 688-690; 352 NW2d 297 (1984). As

such, the trial court did not clearly err when it denied defendant's motion to suppress. *Burrell, supra* at 448.

We affirm.

/s/ Richard A. Bandstra

/s/ Janet T. Neff

/s/ Michael E. Dodge