

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CURTIS STANCIEL,

Defendant-Appellant.

UNPUBLISHED

October 28, 2003

No. 240829

Wayne Circuit Court

LC No. 01-006053-01

Before: Bandstra, P.J., and Hoekstra and Borrello, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of possession of less than twenty-five grams of heroin, MCL 333.7403(2)(a)(v), carrying a concealed weapon, MCL 750.227, and possession of a firearm during the commission of a felony, MCL 750.227b. He was later sentenced to concurrent terms of three months to four years on the controlled substance conviction and three months to five years on the concealed weapon conviction, to be served consecutively to the mandatory two-year term for felony-firearm. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant sole claim is that the evidence was insufficient to support the verdict as to the concealed weapon and felony-firearm charges.

A challenge to the sufficiency of the evidence in a bench trial is reviewed de novo on appeal. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39; 642 NW2d 339 (2002). This Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the crime was proved beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). The trial court's factual findings are reviewed for clear error. A finding of fact is considered "clearly erroneous if, after review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made." *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991).

It is a felony for a person to carry a dangerous weapon, concealed or otherwise, in a vehicle operated or occupied by him. MCL 750.227(1). Carrying a concealed weapon is a general intent crime. *People v Combs*, 160 Mich App 666, 673; 408 NW2d 420 (1987). The only intent necessary is an intent to do the prohibited act, i.e., to knowingly carry the weapon in an automobile. *Id.* The elements of the crime are (1) the presence of a weapon in a vehicle

operated or occupied by the defendant, (2) that defendant knew or was aware of the weapon's presence, and (3) that the defendant was "carrying" the weapon. *People v Nimeth*, 236 Mich App 616, 622; 601 NW2d 393 (1999). "Carrying" is similar to possession and denotes intentional control or dominion over the weapon. *People v Butler*, 413 Mich 377, 390 n 11; 319 NW2d 540 (1982), citing *State v Benevides*, 425 A2d 77 (RI, 1981). Riding in a car with knowledge of the presence of a gun is insufficient to prove the crime. *People v Stone*, 100 Mich App 24, 29; 298 NW2d 607 (1980). Circumstantial evidence and reasonable inferences drawn therefrom are sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

The elements of felony-firearm are that the defendant possessed a firearm during the commission or attempted commission of any felony other than those four enumerated in the statute. MCL 750.227b(1); *People v Mitchell*, 456 Mich 693, 698; 575 NW2d 283 (1998); *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). Possession of a weapon may be actual or constructive and may be proved by circumstantial evidence. *People v Hill*, 433 Mich 464, 469-470; 446 NW2d 140 (1989). "[A] defendant has constructive possession of a firearm if the location of the weapon is known and it is reasonably accessible to the defendant." *Id.* at 470-471.

The evidence showed that defendant was operating a car while in possession of heroin when he was stopped for speeding. He told the police that "there is usually a pistol in the glove box or the console" and they found a loaded firearm in the center console next to the driver's seat. Defendant did not have a permit for the weapon and told the police it belonged to a friend. Such evidence, taken in a light most favorable to the prosecution, was sufficient to prove constructive possession of the weapon. While defendant testified that his statement that there was usually a gun in the car meant that he merely suspected a gun might be present because his parents sometimes put the gun there for safekeeping, the trial court specifically rejected that testimony as incredible. The factfinder, be it the judge or the jury, "may choose to believe or disbelieve any witness or any evidence presented in reaching a verdict," *People v Cummings*, 139 Mich App 286, 293-294; 362 NW2d 252 (1984), and this Court "will defer to the trial court's resolution of factual issues, especially where it involves the credibility of witnesses." *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997). Viewed in a light most favorable to the prosecution, the evidence was sufficient to find that the elements of carrying a concealed weapon and felony-firearm were proven beyond a reasonable doubt. *Harmon, supra*.

Affirmed.

/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra
/s/ Stephen L. Borrello