STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

GEORGE JORDAN,

Defendant-Appellee.

UNPUBLISHED
February 17, 1998

No. 196021
Oakland Circuit Court
LC No. 95-141802 FH

Before: Michael J. Kelly, P.J., and Fitzgerald and M.G. Harrison*, JJ.

MEMORANDUM.

The Oakland Prosecutor appeals by right an order of dismissal in this prosecution for possession with intent to deliver less than fifty grams of cocaine, § 7401(2)(a)(iv) of the Public Health Code, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), a result secondary to suppression of the evidence on Fourth Amendment grounds. The prosecutor contends that suppression of the evidence was erroneous and that the contraband which forms the basis for the prosecution is admissible under the "plain feel" exception to the Fourth Amendment warrant requirement. We affirm.

At preliminary examination, the arresting officer testified that, dealing with a domestic dispute situation, he required defendant to submit to a patdown of his person for weapons. Defendant does not here challenge the existence of the prerequisite "reasonable suspicion" that defendant might be armed, and thus the frisk of defendant's person was constitutionally permissible. *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968).

In the course of this patdown, the officer felt something in defendant's shirt pocket which, at preliminary examination, he testified he knew was not a weapon, but that he could not otherwise identify with any certainty. At a subsequent hearing in circuit court, the officer asserted that he immediately suspected that the object was crack cocaine. The officer manipulated the object through the material of defendant's shirt, confirmed his suspicions, and extracted the item, a plastic bag containing several rocks of cocaine.

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

The circuit court expressed doubt as to the veracity of the claim that the officer could immediately identify the object in defendant's pocket as contraband. Thus, as between the officer's original testimony and his subsequent "clarification," the trial court found his original recitation more credible. This finding of historical fact, based on the credibility of a witness which the trial court was in the superior position to assess, is subject to review in this Court only for clear error. *Ornelas v United States*, 517 US ___; 116 S Ct 1657; 134 L Ed 2d 911, 920 (1996). No basis has been advanced for rejecting that finding under this standard.

Accordingly, given the factual determination that some manipulation of the object in defendant's pocket to determine its character as contraband was required, the officer having already determined that it was not a weapon, such further search of defendant's person exceeded the bounds of the "plain feel" exception to the warrant requirement. The fact that additional "squeezing, sliding and otherwise manipulating the contents of the defendant's pocket" was necessary to identify the material as contraband establishes that the search exceeded the parameters of the plain feel doctrine. *Minnesota v Dickerson*, 508 US 366; 113 S Ct 2130; 124 L Ed 2d 344, 347 (1993); *People v Massey (On Remand)*, 220 Mich App 56, 60; 558 NW2d 253 (1996), lv den 355 Mich 864 (1997). Therefore, although we review the decision to suppress the evidence de novo, *Ornelas, supra*, we conclude that the evidence was the product of a violation of defendant's Fourth Amendment rights and must accordingly be suppressed.

Affirmed.

/s/ Michael J. Kelly
/s/ E. Thomas Fitzgerald
/s/ Michael G. Harrison