STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICKY L. JAMESON,

Defendant-Appellant.

UNPUBLISHED
February 24, 1998

No. 200536
Oakland Circuit Court
LC No. 95-138398 FH

Before: Markey, P.J., and Doctoroff and Smolenski, JJ.

MEMORANDUM.

Defendant appeals by right his jury conviction of possession of controlled substances under 25 grams, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), and of possession of prescription forms, MCL 333.7403(2)(f); MSA 14.15(7403)(2)(f). This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The sole issue raised on appeal concerns a search and seizure. After an evidentiary hearing on October 31, 1995, the trial court concluded that the principal evidence against defendant was the product of a consensual search. The trial court's findings of historical fact in such situations are reviewed for clear error, while determinations of law and mixed findings of fact and law are subject to de novo appellate review. *Ornelas v United States*, 517 US 690; 116 S Ct 1657; 134 L Ed 2d 911, 919-920 (1996); *People v Goforth*, 222 Mich App 306, 310, n 4; 564 NW2d 526 (1997). The finding of consent is one of fact on this record and, being supported by a permissible view of the conflicting evidence, based on an assessment of witness credibility, is not clearly erroneous. *Goforth*, *supra* at 309-310.

Here, the trial court in effect determined that defendant, properly stopped for investigation of a traffic violation (possible drunk driving), *Whren v United States*, 517 US 806; 116 S Ct 1769; 135 L Ed 2d 89 (1996), on being validly requested to exit from his vehicle, *Maryland v Wilson*, 519 US ___; 117 S Ct 882; 137 L Ed 2d 41 (1997); *Michigan v Long*, 463 US 1032; 103 S Ct 3469; 77 L Ed 2d 1201 (1983), first consented to a patdown of his person, and then on request produced the contents of his pocket for the officer's viewing. Defendant's voluntary disclosure resulted in the officer identifying

contraband, but this action by defendant did not implicate the Fourth Amendment because there was no search. *United States v Stanley*, 597 F2d 866, 869 (CA 4, 1979); *State v Johnson*, 414 A2d 477, 479 (RI, 1980). As defendant was then validly arrested for possession of such contraband, the search of the passenger compartment of the vehicle incident to arrest requires no additional Fourth Amendment justification. See *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996). Defendant's motions to suppress evidence and to quash the information were correctly denied by the trial court.

This Court has noted that defendant, on being adjudicated a second offender, received enhanced sentences on each count, purportedly in furtherance of MCL 769.10; MSA 28.1082. However, that statute applies only to felony convictions. The offense of possession of prescription forms, both by its terms and by virtue of the penalty prescribed, is a misdemeanor. MCL 761.1; MSA 28.843. Accordingly, the habitual offender statute does not apply to that conviction. Cf. *People v Smith*, 423 Mich 427, 445; 378 NW2d 384 (1985). Defendant's enhanced sentence on that conviction is therefore improper, and this cause is remanded to the Oakland Circuit Court for the ministerial task of correcting the judgment of sentence to reflect the sentence initially imposed by the trial court on this count, before that sentence was vacated and replaced by an enhanced sentence under the Habitual Offender Act.

Affirmed, but remanded for correction of sentence. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Martin M. Doctoroff
/s/ Michael R. Smolenski