

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRIAN ALEXANDER WILLIAMS,

Defendant-Appellant.

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UNPUBLISHED

March 12, 1999

No. 203171

Kalamazoo Circuit Court

LC No. 96-001028 FH

Before: Markey, P.J., and Saad and Collins, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of carrying a concealed weapon, MCL 750.227; MSA 28.424. Defendant was sentenced to three years' probation, the first sixty days to be served in the Kalamazoo County Jail. Defendant appeals of right. We affirm.

This case arose out of a traffic stop of defendant that took place in the city of Kalamazoo. Defendant drove past Kalamazoo Department of Public Safety Officers as they were making an arrest in an unrelated matter. Based upon the sound of loud music that they heard coming from defendant's vehicle, two officers followed defendant, stopped him, asked him to step out of the vehicle, and informed him that he was under arrest for excessive noise. Upon searching defendant, one of the officers found a handgun in his pocket. Defendant was charged with carrying a concealed weapon and subsequently bound over for trial.

Defendant argues on appeal that the district court erred in binding him over on the weapons charge, because the weapon found on his person was the product of an unlawful search. For the same reason, defendant also argues that the trial court erred in denying his motion to suppress the gun and dismiss the charge against him. We review de novo the district court's decision to bind over defendant to determine if that court abused its discretion. *People v Flowers*, 191 Mich App 169, 174; 477 NW2d 473 (1991). Likewise, we review de novo the circuit court's ultimate decision not to suppress evidence; however, we review its findings of fact in deciding the motion for clear error. *People v Parker*, 230 Mich App 337, 339; 584 NW2d 336 (1998). Finally, this Court reviews constitutional issues de novo. *People v Houstina*, 216 Mich App 70, 73; 549 NW2d 11 (1996).

The Fourth Amendment of the United States Constitution and its counterpart in the Michigan Constitution guarantee the right of persons to be secure against unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11. A warrantless search incident to a custodial arrest based on probable cause is a reasonable search and, therefore, permitted by the Fourth Amendment. *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996); *People v Catanzarite*, 211 Mich App 573, 580-581; 536 NW2d 570 (1995). Defendant argues that the officers in this case did not have probable cause to arrest him, because there was no evidence that he had violated the noise provisions of the Kalamazoo Code. He argues further that even if he had violated the Code, such violation was a civil infraction, not a misdemeanor, and the police are not authorized to arrest persons for civil infractions. Thus, under either theory, argues defendant, his arrest was illegal and anything revealed by the search incident to his arrest was not admissible as evidence against him. We disagree.

Defendant acknowledges that he was stopped and arrested for violating Kalamazoo Code § 21-6, which provides as follows:

(a) It shall be unlawful for any person to make or cause to be made or continued any excessive or unusually loud noise or any noise, measured or unmeasured, which either disturbs, injures or endangers the comfort, repose, health, peace or safety of any person within the limits of the city.

(b) The acts enumerated in the following sections of this chapter are declared to be loud, disturbing noises in violation of this chapter, *but such enumeration shall not be deemed to be exclusive*. [Emphasis added; citations omitted.]

Defendant contends that § 21-6 must be read in conjunction with § 21-7, which defines noise limitations based on decibel criteria. Section 21-7(c)(2)(b) prohibits operation of a motor vehicle on a highway or street if it produces total noise in excess of the stated limitations at a distance of fifty feet. Because the arresting officer testified that he did not hear the music coming from defendant's vehicle until defendant was thirty to forty feet away, and because the officer could not identify the level of noise coming from defendant's vehicle in terms of decibels, defendant contends that he could not have violated the statute, and the police had no probable cause to arrest him. We find defendant's argument to be without merit.

Under the plain language of § 21-6, violations of that section are not limited to those defined in § 21-7. Rather, the noise levels identified in §21-7 simply are deemed prima facie evidence of a violation of § 21-6. Moreover, § 21-6 specifies that the disturbing noise may be measured *or unmeasured*. In arguing that § 21-7 is the controlling provision in this case, defendant cites *Baxter v Gateway Rubber Co*, 171 Mich App 588, 590-591; 431 NW2d 81 (1988), for the proposition that where there is a conflict between a specific and a general statute, the specific statute controls. However, given that there exists no conflict between the general provisions of § 21-6 and the specific provisions of § 21-7, but instead, those provisions may be read in harmony with each other, defendant's reliance on *Baxter* is misplaced.

Furthermore, because § 21-6 prescribes no specific penalty, Kalamazoo Code § 1-7 operates to make a violation of § 21-6 a misdemeanor. That section provides:

(a) Whenever in this Code or in any rule or regulation adopted under this Code an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or wherever in such Code or rule or regulation the doing of any act is required or the failure to do any act is declared to be unlawful, and no specific penalty is provided therefor, the violation of any such provision of this Code or rule or regulation shall be punishable by a fine of not more than five hundred dollars (\$500.00) and costs of prosecution, or by imprisonment for not more than ninety (90) days, or by both such fine and imprisonment. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense.

A police officer who witnesses a misdemeanor may place the violator under arrest without a warrant. MCL 764.15(1)(a); MSA 28.874(1); *People v Wood*, 450 Mich 399, 403; 538 NW2d 351 (1995); *People v Lyon*, 227 Mich App 599, 604; 577 NW2d 124 (1998). Given the arresting officer's testimony that the noise emanating from defendant's vehicle was sufficient to qualify as excessive under § 21-6 and the fact that a violation of § 21-6 constitutes a misdemeanor, we find that the district court did not abuse its discretion in finding that the officer had probable cause to arrest defendant. Moreover, because the gun was found during a search incident to that lawful arrest, the district court did not abuse its discretion in binding over defendant for trial on the weapons charge. For the same reasons, we find that the circuit did not err in denying defendant's motion to suppress the evidence and dismiss the charge.

Finally, defendant asserts that stopping him for excessive noise was pretextual and, therefore, unconstitutional. However, defendant's claim of pretext is found only in his statement of the issue presented and is not argued in the body of his brief. He cites neither authority nor to the record in support of his position. Because defendant cites no authority to support his position, we consider the issue to be waived. *People v Hanna*, 223 Mich App 466, 470; 567 NW2d 12 (1997). Nevertheless, in light of our conclusion that the officers in this case had probable cause to arrest defendant and that the arrest was authorized by law, we find that defendant's assertion is without merit. See *People v Haney*, 192 Mich App 207, 210; 480 NW2d 322 (1991).

Affirmed.

/s/ Jane E. Markey  
/s/ Henry William Saad  
/s/ Jeffrey G. Collins