STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee

v

DESHON JAMES SEABROOKS,

Defendant-Appellant.

UNPUBLISHED
February 11, 2000

No. 212293
Kent Circuit Court
LC No. 97-011765-FH

Before: Markey, P.J., and Murphy and R.B. Burns*

PER CURIAM.

After a jury trial, defendant was convicted of possession with intent to deliver less than 50 grams of cocaine in violation of MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv) and of a second drug offense in violation of MCL 333.7413(2); MSA 14.15(7413)(2). Defendant was sentenced as an habitual offender, MCL 769.10; MSA 28.1082, to imprisonment of five to fifteen years. Defendant appeals as of right. We affirm.

Defendant first argues that his federal and state constitutional rights to be free from unreasonable searches and seizures were violated because his arrest was a pretext to search for evidence of drugs. Because defendant did not object at trial, this issue is unpreserved for appellate review absent manifest injustice. *People v Griffin*, 235 Mich App 27, 44; 597 NW2d 176 (1999). We find no manifest injustice.

The right against unreasonable searches and seizures is guaranteed by both the United States and Michigan Constitutions. US Const, Am IV; Const 1963, art 1, § 11; *In re Forfeiture of $176,598*, 443 Mich 261, 264-265; 505 NW2d 201 (1993). "An arrest or stop may not be used as a 'pretext' or 'subterfuge' to search for evidence of crime." *People v Haney*, 192 Mich App 207, 209; 480 NW2d 322 (1992). The stop is a mere pretext when police lack reasonable suspicion which supports a stop and, instead, use a minor violation to stop and search a person or place for evidence of an unrelated crime. *Id.* Traditionally, all evidence derived from a search made incident to a stop or arrest that was a mere pretext has been suppressed. *Id.* Under the Federal Constitution, a police

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

officer may lawfully stop a car for a traffic violation and, even though the officer had no reason to suspect foul play at the time of the stop, a police officer's order to a driver to get out of the car after the stop, does not violate the Fourth Amendment. *People v Harmelin*, 176 Mich App 524, 526, 530-531; 440 NW2d 75 (1989), aff'd *Harmelin v Michigan,* 501 US 957; 111 S Ct 2680; 115 L Ed 2d 836 (1991). Under the facts of this case, defendant is entitled only to those protections available to him under the federal constitution. *Id*. at 531.

Defendant argues that the police did not have probable cause to stop his car because failing to signal when turning from an alley onto a street is not a traffic violation under the Motor Vehicle Code. We disagree. MCL 257.648; MSA 9.2348 provides that:

> (1) The driver of a vehicle or bicycle upon a *highway*, before stopping or turning from a direct line, shall first see that the stopping or turning can be made in safety and shall give a signal as required in this section. [Emphasis added.]

Defendant argues that a turn signal was not required in this instance and that he committed no traffic violation because he was driving on an alley, not a highway. However, the term "highway" is a generic name for all of the various kinds of public ways, including alleys. "Every public thoroughfare is a highway." *In re Petition of Carson*, 362 Mich 409, 412; 107 NW2d 902 (1961). Therefore, the police officer in this case lawfully stopped defendant for a valid traffic violation.

Next, once stopped for the traffic violation, defendant was then placed under arrest for not having his driver's license on his person. The reasonableness of an arrest depends upon two objective factors: (1) whether the arresting officer had probable cause to believe that the defendant committed or was committing an offense, and (2) whether the arresting officer was authorized by law to effect a custodial arrest for the particular offense. *Haney, supra* at 210. As long as these two factors are present, a stop or arrest is necessarily reasonable pursuant to the Fourth Amendment because the police are doing no more than they are legally permitted and objectively authorized to do. *Id.*

Because a police officer saw defendant drive his vehicle out of an alley onto a street without signaling, the police had probable cause to believe defendant had committed an offense. There is no dispute that the police were authorized by law to stop the vehicle and then make the custodial arrest for defendant's offense of driving without having a driver's license on his person. *Id.* at 210-211. Therefore, the stop and arrest were constitutional and not mere pretexts. *Id.* at 211. Also, once the police made a lawful custodial arrest of defendant, the driver of the vehicle, "the contemporaneous search of the passenger compartment of the car was [also] constitutional." *Id.* Therefore, the police did not violate defendant's federal and state constitutional rights to be free from unreasonable searches and seizures.

Next, defendant contends that there was insufficient evidence to support his conviction. In reviewing the sufficiency of the evidence in a criminal case, this Court must view the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). However, this Court should not interfere with the jury's role of

determining the weight of evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748, amended 441 Mich 1201 (1992). A prosecutor need not negate every reasonable theory of innocence, but must only prove his own theory beyond a reasonable doubt in the face of whatever contradictory evidence the defendant provides. *People v Quinn*, 219 Mich App 571, 574; 557 NW2d 151 (1996).

In order to prove the statutory crime of illegally possessing with intent to deliver less than 50 grams of a mixture containing a controlled substance, cocaine in this case, the prosecutor must prove each of the following four elements: (1) that cocaine was recovered, (2) the mixture in which the cocaine is contained weighs less than fifty grams, (3) defendant's possession of the substance was not authorized, and (4) defendant knowingly possessed the cocaine with the intent to deliver it. *Wolfe, supra* at 516-517. On appeal, defendant has challenged only the fourth element of the offense. Defendant argues that he did not knowingly possess the cocaine or intend to deliver it to another person. This element of the offense has two components, possession and intent, which will be considered separately. *Id.* at 519.

Because possession may be either actual or constructive, possession of a controlled substance does not require a person to have actual physical possession to be guilty of possessing it. *Id.* at 519-520. Also, possession does not require ownership of the controlled substance. *Id.* at 520. Furthermore, "possession may be joint, with more than one person actually or constructively possessing a controlled substance." *Id.* In this case, there was no direct evidence at trial that defendant actually possessed the cocaine because the cocaine was found on the floor of defendant's car in a pack of cigarettes. However, constructive possession requires only that defendant "had the right to exercise control of the cocaine and knew that it was present." *Id.*, quoting *People v Germaine*, 234 Mich 623, 627; 208 NW 705 (1926). Constructive possession exists when the totality of the circumstances indicates a sufficient nexus between the defendant and the contraband to support the inference that the defendant exercised dominion and control over the substance. *Wolfe, supra* at 521. "Constructive possession may be demonstrated by direct or circumstantial evidence that the defendant had the power to dispose of the drug, . . . or that the defendant had the 'exclusive control or dominion over property on which narcotics are found.'" *Id.*, quoting *United States v Rackley*, 742 F2d 1266, 1272 (CA 11, 1984).

Here, several factors linked defendant with the cocaine that was found in the car. First, although the car in which the cocaine was found was a rental vehicle, defendant was the driver at the time the cocaine was found and had "exclusive control and dominion over the property on which the cocaine was found." Also, it was defendant who accelerated the vehicle when the police turned on their overhead lights in an attempt to stop the vehicle and it was defendant's actions which required police to physically block the vehicle from the front and back to get it to stop. Therefore, a rational jury could logically have inferred from all the circumstances that, among those found in the vehicle, defendant was the one with control over the premises. There was also evidence that defendant was seen reaching into the back seat and behind his seat in the exact location where the cocaine was found. Therefore, a rational jury could logically have inferred that defendant knew that the cocaine was present.

In order to prove intent to deliver, it is not necessary to prove actual delivery. *Wolfe, supra* at 524. "Intent to deliver has been inferred from the quantity of narcotics in a defendant's possession, from the way in which those narcotics are packaged, and from other circumstances surrounding the arrest." *Id.* "Possession with intent to deliver can be established by circumstantial evidence and reasonable inferences arising from that evidence, just as it can be established by direct evidence." *Id.* at 526. Here, 30 to 40 pieces of crack cocaine which had a street value of between $600 and $800 were found in defendant's possession. A police officer testified that this is too large an amount for someone to carry on himself for personal use as the average user would have one or two pieces on his person at a time. Based upon the amount of cocaine and the fact that no glass pipes or other paraphernalia typically used to smoke cocaine were found, it was logical for the jury to conclude that defendant possessed the cocaine with the intent of selling it. Therefore, based on a review of the evidence, the jury could have rationally concluded that defendant's guilt of possession with the intent to deliver less than fifty grams of cocaine had been proven beyond a reasonable doubt.

Defendant next argues that he received ineffective assistance of counsel because counsel failed to move for suppression of evidence recovered as the result of an illegal seizure. Defendant's argument fails because, as discussed above, the search and seizure did not violate defendant's constitutional rights. Therefore, any motion to suppress the evidence would have been meritless. Counsel is not required to argue a frivolous or meritless motion. *People v Darden*, 230 Mich App 597, 605; 585 NW2d 27 (1998). Defendant also argues that he received ineffective assistance of counsel because counsel failed to move for a directed verdict where there was insufficient evidence to convict defendant. This argument, however, also fails on the same basis.

Affirmed.

/s/ Jane E. Markey
/s/ William B. Murphy
/s/ Robert B. Burns