

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

LAVERNE MCKINNIE,

Defendant-Appellee.

UNPUBLISHED

June 30, 2000

No. 223307

Wayne Circuit Court

LC No. 99-005426

Before: O’Connell, P.J., and Kelly and Whitbeck, JJ.

PER CURIAM.

The prosecution appeals the trial court’s order granting defendant’s motion to suppress statement and to dismiss prosecution. We reverse.

On April 16, 1999, police officers executed a search warrant at defendant’s residence. Defendant was not named in the warrant, and was not present at the time of the search. The police seized cocaine and other items from defendant’s bedroom. Based upon the items that were confiscated and information supplied by defendant’s father, the police proceeded to defendant’s place of business, a beauty salon, and arrested her without a warrant. After being informed of her rights, defendant made a statement to the police.

Defendant was charged with possession with intent to deliver at least 50 but less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii), and possession of marijuana, MCL 333.7403(2)(d); MSA 14.15(7403)(2)(d). Defendant filed a motion to suppress her statement on the ground that it was made subsequent to an illegal arrest. Defendant argued that her arrest was unsupported by a warrant or probable cause, and that the beauty salon was not a public place, which would have obviated the need for an arrest warrant. The trial court held that defendant had a reasonable expectation of privacy at her place of employment, granted defendant’s motion to suppress her statement and dismissed the case.

“This Court reviews a trial court’s ruling regarding a motion to dismiss for an abuse of discretion.” *People v Adams*, 232 Mich App 128, 132; 591 NW2d 44 (1998). The prosecution argues that the trial court erred in ruling that defendant was arrested, and her confession was obtained,

in violation of the Fourth Amendment. The application of constitutional standards to uncontested facts is a question of law subject to de novo review. *People v Stevens*, 460 Mich 626, 631; 597 NW2d 53 (1999).

The prosecution first argues that defendant's arrest was legal because it was supported by probable cause. We agree. 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; *People v Zahn*, 234 Mich App 438, 446; 594 NW2d 120 (1999). This Court has emphasized that "[t]he Fourth Amendment is not a guarantee against all searches and seizures, but only against those that are unreasonable." *People v Rasmussen*, 191 Mich App 721, 724-725; 478 NW2d 752 (1991), citing *People v Shabaz*, 424 Mich 42, 52; 378 NW2d 451 (1985). The Michigan Constitution imposes no higher standard than that imposed by the United States Constitution." *Rasmussen, supra*, 191 Mich App 725.

In reviewing a trial court's ruling on probable cause, "an appellate court must determine whether the facts available to the arresting officer at the moment of arrest would justify a fair-minded person of average intelligence in believing that the suspected individual had committed the felony." *People v Kelly*, 231 Mich App 627, 631-632; 588 NW2d 480 (1998), citing *People v Oliver*, 417 Mich 366, 374; 338 NW2d 167 (1983). A police officer may arrest without a warrant if he has probable cause to believe that a felony has been committed and that the suspect committed the felony. MCL 764.15; MSA 28.874. "Probable cause to arrest exists if the facts available to the officer at the moment of arrest would justify a fair-minded person of average intelligence to believe that the suspected person has committed a felony." *People v Thomas*, 191 Mich App 576, 579; 478 NW2d 712 (1991), citing *Oliver, supra*, 417 Mich 374.

In this case, defendant was not present when the police searched the house. However, we find that the facts supported a finding of probable cause to arrest defendant. The police found cocaine in the upstairs bedroom on a table beside the bed. The only clothing in the bedroom was adult female clothing. Defendant's father told the police that his daughter occupied that bedroom. The police found a piece of mail bearing defendant's name in the bedroom. The police also seized a photograph of defendant from the bedroom. The facts available at the time the police arrested defendant would justify a fair-minded person of average intelligence to believe that defendant had committed the felony with which she was charged.

Defendant argues that the police were required to obtain an arrest warrant before arresting her at her place of business. "An arrest without a warrant of an individual in a public place upon probable cause does not violate constitutional prohibitions against unreasonable arrest or search and seizure." *People v Collier*, 183 Mich App 473, 475; 455 NW2d 313 (1989), citing *United States v Santana*, 427 US 38, 42; 96 S Ct 2406; 49 L Ed 2d 300 (1976). Whether the place of arrest is properly deemed a "public place" depends upon whether the individual had a reasonable expectation of privacy in the area of the intrusion. *People v Smith*, 420 Mich 1, 21; 360 NW2d 841 (1984); *People v Smith*, 162 Mich App 534, 539; 413 NW2d 42 (1987). An expectation of privacy is legitimate if the person had an actual, subjective expectation of privacy and that actual expectation is one that society recognizes as reasonable. Whether the expectation exists, both subjectively and objectively, depends

on all the circumstances surrounding the intrusion. *People v Perlos*, 436 Mich 305, 317-318; 462 NW2d 310 (1990); *Smith, supra*, 420 Mich 27-28.

Defendant was arrested while working as a beautician in a beauty shop, which was open to the public. The record is devoid of any specific, physical description of the shop, such as a door or partition separating defendant from the open area of the shop. Defendant acknowledges that the beauty shop may be “open to the general female public.” We reject defendant’s suggested analogy between the privacy expectation in her work station in the beauty shop and a motel room, and find that she had no reasonable expectation of privacy at the beauty salon. The beauty salon was a sufficiently public place in which the police could properly arrest defendant on probable cause without an arrest warrant.

Reversed

/s/ Peter D. O’Connell

/s/ Michael J. Kelly

/s/ William J. Whitbeck