

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEVIN LAMONT HARRIS,

Defendant-Appellant.

UNPUBLISHED

September 22, 2000

No. 220417

Jackson Circuit Court

LC No. 99-092226-FH

Before: Talbot, P.J., and Hood and Gage, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). He was sentenced as an habitual offender, fourth offense, MCL 769.12; MSA 28.1084, to a term of eight to forty years' imprisonment. Defendant appeals as of right, and we affirm.

On December 19, 1998, Officer Aaron Kantor was on patrol in a marked vehicle. As part of the resident officer program, Officer Kantor resided in the neighborhood that he was assigned to patrol. Officer Kantor received several tips regarding the residence located at 301 West High. Specifically, residents complained that the home was used for drug dealing. Officer Kantor set up surveillance of the residence. The officer saw defendant and another male exit the home. The men were in front of the home when they engaged in hand to hand motions. Based on his prior experience, Officer Kantor believed that the men were involved in a drug transaction. Despite the fact that it was approximately 8:45 p.m., Officer Kantor testified that it was "dusk," but still visible. Additionally, the street area was lit. Officer Kantor drove by the two men who abruptly turned their backs to his vehicle. Officer Kantor drove thirty yards past the home before turning around. He then observed the men get into a taxicab that had pulled into the driveway of the residence, and the taxicab pulled away. Officer Kantor notified Officer Craig Edmondson, who was traveling in another patrol unit, of his intent to stop the vehicle. Officer Kantor activated his overhead lights and his spotlight. He observed defendant turn around, change seat positions and move in a backward and forward motion. Both men were removed from the back seat of the vehicle. Officer Kantor observed that the taxicab seat was pulled away from the back support area, and there was a plastic baggie tucked underneath the seat of the cab where defendant

was seated. Ultimately, two baggies containing rocks of crack cocaine were removed from the seat area of the taxicab. Prior to leaving the jail, defendant admitted that the drugs belonged to him.

Defendant argues that he has standing to challenge the validity of the unlawful stop of the taxicab. We disagree. Standing is contingent upon whether, in light of the totality of the circumstances, the defendant had an expectation of privacy in the object of the search and seizure, and whether that expectation is one that society is prepared to recognize as reasonable. *People v Armendarez*, 188 Mich App 61, 70-71; 468 NW2d 893 (1991). In *Armendarez*, we held that the owner of a vehicle and his possessory interest in the vehicle was a sufficient privacy interest that allowed him to challenge the validity of a search. However, the co-defendant passenger could neither assert a proprietary nor possessory interest in the automobile. Accordingly, the passenger did not have a legitimate expectation of privacy in the interior of the automobile and did not have standing to challenge the search of the driver's vehicle. *Id.* Likewise, in the present case, defendant has failed to identify a proprietary or possessory interest in the taxicab that would lead to an expectation of privacy. Accordingly, defendant does not have standing to challenge the validity of the search and seizure of the taxicab. *Id.*

Defendant also argues that the police could not articulate a reasonable particularized suspicion that the occupants of the taxicab were involved in drug trafficking. We disagree. To make a constitutionally proper stop, law enforcement officers must submit a particularized suspicion that the individual being investigated has been, is, or is about to be engaged in criminal activity. *People v Yeoman*, 218 Mich App 406, 410; 554 NW2d 577 (1996). The suspicion must be reasonable, articulable, and based on the totality of the circumstances. *Id.* In the present case, Officer Kantor testified that he resided in the neighborhood and had learned of complaints of drug trafficking occurring from the subject home. Accordingly, he set up surveillance in the area. After twenty minutes, defendant and another man emerged from the home and engaged in gestures consistent with a drug exchange. Officer Kantor testified that he had prior experience in drugs exchanges and had been involved in over one hundred transactions. Based on the circumstances, Officer Kantor presented a reasonable and articulable suspicion. *Id.* Accordingly, defendant's claim is without merit.¹

Affirmed.

/s/ Michael J. Talbot

¹ Defendant also argues that the trial court erred in declining to rule on his motion to suppress by concluding that the issue presented a question for the trier of fact. Therefore, defendant argues that a remand for findings of fact is required. A trial court's ruling regarding a motion to suppress presents a question of law that we review de novo. *People v Mayhew*, 236 Mich App 112, 117; 600 NW2d 370 (1999). However, findings of facts in deciding the motion are reviewed for clear error. *People v Parker*, 230 Mich App 337, 339; 584 NW2d 336 (1998). While the trial court erroneously concluded that the issue presented was for the jury's determination, a remand for findings of fact is moot. The trial court admonished defendant at sentencing that his trial testimony was tailored to discredit the nuances of the testimony of the arresting officers and was completely incredible. Accordingly, a remand is unnecessary because the court's fact finding is implicit from the record.

/s/ Harold Hood
/s/ Hilda R. Gage