STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 20, 2000
v	No. 220402 Kent Circuit Court
THOMAS JAMES PATTERSON, JR., Defendant-Appellant.	LC No. 97-012130-FH

Before: Fitzgerald, P.J., and Hood and McDonald, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of possessing more than fifty grams but less than 225 grams of a mixture containing cocaine, MCL 333.7403(2)(a)(iii); MSA 14.15(7403)(2)(a)(iii), and was sentenced to a prison term of ten to twenty years. He appeals as of right. We affirm defendant's conviction but remand for proceedings consistent with this opinion.

I

Defendant first argues that the trial court erred in denying his motion to suppress. On appeal from a trial court's ruling on a motion to suppress seized evidence, this Court reviews the trial court's findings of fact for clear error, but reviews de novo the ultimate decision. *People v Darwich*, 226 Mich App 635, 637; 575 NW2d 44 (1997).

The Fourth Amendment and its Michigan counterpart guarantee the right of people to be secure against unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11. The Fourth Amendment is not, however, a guarantee against all searches and seizures but rather only those that are unreasonable. *People v Armendarez*, 188 Mich App 61, 66; 468 NW2d 893 (1991).

Defendant argues that the initial stop of the vehicle in which he was riding, as well as the subsequent patdown search of his person following that stop, were unreasonable because the facts surrounding the incident were insufficient to support a reasonable suspicion of criminal activity. In doing so, defendant argues that although the officers may have been justified in stopping the vehicle on the basis of a defective tail light, which is a mere civil infraction, the lack of additional facts supporting a

reasonable suspicion of other criminal activity prevented the officers from conducting a search of the vehicle or its occupants. Therefore, defendant argues that because the officers utilized the defective tail light as an illegal "pretext" to conduct a search for evidence of criminal activity unrelated to the traffic violation and for which they had no reasonable suspicion to support an investigatory stop and search, the trial court was required to suppress, as the product of an unreasonable search and seizure, all evidence garnered from the vehicle stop. We disagree.

In *People v Haney*, 192 Mich App 207; 480 NW2d 322 (1991), this Court held that regardless of an officer's subjective intent in making a stop, where his actions constitute "no more than [he is] legally permitted and objectively authorized to do," the stop will be considered constitutionally valid as "necessarily reasonable under the Fourth Amendment." *Id*. at 210-211. The question is whether, when objectively viewed, the officer's conduct was valid, without regard to any "subjective intent" the officer may have possessed at the time of the stop. *Id*.; see also *Whren v United States*, 517 US 806; 116 S Ct 1769; 135 L Ed 2d 89 (1996).

Therefore, contrary to defendant's argument, inasmuch as the police were legally permitted to effectuate a stop of the vehicle on the basis of an observed traffic violation, the stop itself was constitutionally valid despite any additional subjective motivations the officer may have harbored in effectuating the stop.

Nonetheless, defendant argues that because the circumstances surrounding the stop were insufficient to support a reasonable suspicion that defendant, who was merely a passenger in the vehicle, was involved in any criminal activity, the subsequent patdown search of his person was invalid. Again, we disagree.

The law has recognized a weighty public interest in the safety of police officers. See *Pennsylvania v Mimms*, 434 US 106, 116-119; 98 S Ct 330; 54 L Ed 2d 331 (1977); *Terry v Ohio*, 392 US 1, 23-24; 88 S Ct 1868; 20 L Ed 2d 889 (1968). Therefore, it has been held that during the course of a lawful traffic stop police officers are justified in conducting a limited protective search of a vehicle's occupants for concealed weapons if they have reason to believe that the occupants are armed and dangerous. *Mimms*, *supra* at 111-112; *Terry*, *supra* at 27. In determining the validity of such a search, the issue is whether a reasonably prudent person in the circumstances would be warranted in the belief that his safety or that of others was in danger. *Terry*, *supra*. Whether the police conduct violates the Fourth Amendment's guarantee against unreasonable searches and seizures must be evaluated in light of the totality of the circumstances with which the police were confronted. *Armendarez*, *supra* at 66-67. In analyzing these circumstances, deference should be given to the experience of law enforcement officers and their assessments of criminal modes and patterns. *People v Nelson*, 443 Mich 626, 636; 505 NW2d 266 (1993). Under the circumstances presented to the officers in the instant situation, we believe that a reasonably prudent man would be warranted in the belief that his safety was in danger.

Although the vehicle in which defendant was riding had been stopped for a minor traffic violation, the police possessed additional information about that vehicle which warranted caution in effectuating that stop. The vehicle, which was registered to a Detroit address and appeared to be

traveling closely with a second car, had been seen leaving a known drug house in the Grand Rapids area only hours after a resident of that house had placed a telephone call ordering a quantity of cocaine on behalf of an undercover police officer. The undercover officer making these observations, Detective Todd Butler, testified during the preliminary examinations that based on his participation in more than one hundred undercover drug investigations in the Grand Rapids area, these facts caused him to suspect that the vehicles were involved in the trafficking of illegal drugs. Butler explained that much of the cocaine sold in the Grand Rapids area is brought in from Detroit and that when transporting drugs from city to city, drug traffickers would often "caravan," or travel in tandem, with one car carrying armed occupants whose purpose is to protect the second vehicle which carries either drugs or money. Butler further testified that it is generally known by police that individuals involved in drug trafficking often carry weapons and thus when he communicated his suspicions about these vehicles to the officers who ultimately made the stop, he included a specific warning to use due caution because of the suspected drug activity.

Moreover, after these officers pulled behind the suspect vehicles in a marked police cruiser, both cars immediately slowed their rate of travel to a speed well below the minimum posted limit before the cruiser's overhead lights had even been activated, a suspicious reaction in and of itself. Jon Kraczon, the officer conducting the patdown search of defendant, testified that in light of Butler's warnings as well as his own experience with drug traffickers, he approached the stop with caution and conducted a protective search of the occupants for weapons. Moreover, contrary to defendant's argument on appeal, Kraczon could also properly rely on Butler's earlier observations in determining that the circumstances warranted such a search. See *People v Chambers*, 195 Mich App 118, 122; 489 NW2d 168 (1992).

In light of the foregoing facts, we find that the totality of the circumstances in this case justified the patdown search of defendant for the safety of the officers involved. The reasonableness of such a search, of course, depends "on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers." *Mimms, supra* at 109. In the present case, we do not believe that the limited intrusion created by the patdown search for weapons was, on balance, an unreasonable search under the circumstances. Accordingly, we conclude that the motion to suppress was properly denied.

II

Defendant next argues that he is entitled to a new trial because the trial court failed to adequately establish on the record the voluntary and intelligent nature of his jury waiver. We review for clear error a trial court's determination that a defendant has validly waived his right to a jury trial. *People v Leonard*, 224 Mich App 569, 595; 569 NW2d 663 (1997).

MCR 6.402(B) sets forth the procedure for waiver of jury trial:

> Before accepting a waiver, the court must advise the defendant in open court of the constitutional right to trial by jury. The court must also ascertain, by addressing the

> defendant personally, that the defendant understands the right and that the defendant voluntarily chooses to give up that right and to be tried by the court. . . .

The record in this matter shows that the trial court's advice to and questioning of defendant was sufficient. See *Leonard*, *supra* at 595; *People v Shields*, 200 Mich App 554, 560-561; 504 NW2d 711 (1993). The trial court did not clearly err in determining that defendant validly waived his right to a jury trial.

III

Defendant next argues that the Holmes Youthful Trainee Act (HYTA), MCL 762.11; MSA 28.853(11), violates equal protection because it grants the trial court discretion to grant an offender the benefits of "youthful trainee" status if the offender pleads guilty, but not if the offender is convicted after a trial. Defendant contends that because this burdens the offender's exercise of his constitutional right to trial by requiring that he give up that right in order to receive the benefits of youthful trainee status, the HYTA is violative of the equal protection guarantees afforded by our constitutions. See US Const, Art IX, § 1; Const 1963, art 1, § 2.

The United States Supreme Court has held that a state may create statutes that encourage guilty pleas and in doing so has expressly rejected the notion that such statutes violate, or even implicate, equal protection concerns. See *Corbitt v New Jersey*, 439 US 212, 223, 225-226; 99 S Ct 492; 58 L Ed 2d 466 (1978). While recognizing the "discouraging effect" that statutes encouraging guilty pleas may have on a defendant's exercise of his right to trial, the majority in *Corbitt* noted that "not every burden on the exercise of a constitutional right, and not every pressure or encouragement to waive such a right, is invalid." *Id*. at 220, 222. Inasmuch as a defendant is free to accept or reject the choice presented to him under such a statute, the statute does not unconstitutionally burden the defendant's right to trial. *Id*. at 225. In addition, after observing that all offenders charged under the statute are given the same choice and that a defendant who pleaded guilty could receive the same life sentence as a defendant who had chosen to go to trial, the majority found that the statute did not implicate concerns of equal protection. *Id*. at 226.

Like the statute at issue in *Corbitt*, the HYTA offers a significant benefit to those offenders who choose to plead guilty. However, also consistent with that statute, the HYTA presented defendant with a choice – whether to go to trial and relinquish the opportunity to gain youthful trainee status, or to plead guilty and abandon the chance of acquittal. Inasmuch as the Court in *Corbitt* found that the Equal Protection Clause does not protect a defendant from the consequences of that choice, defendant's argument to the contrary is unpersuasive. *Id*.

We likewise reject defendant's contention that the trial erred by determining that defendant was ineligible for consideration under the HYTA because his conviction constituted a "major controlled substance offense." MCL 761.2; MSA 28.843(12) explicitly provides that for purposes of the Code of Criminal Procedure, which includes within its parameters the HYTA, the term "major controlled substance offense" shall include a violation of § § 7403(2)(a)(i)-(iv). Here, defendant was convicted of

violating § 7403(2)(a)(iii) and, therefore, his conviction rendered him ineligible for consideration under the HYTA.

IV

Lastly, defendant argues that he must be resentenced because the trial court failed to recognize its authority to impose a sentence below the statutory minimum generally required for a conviction under § 7403(2)(a)(iii). Pursuant to MCL 333.7403(3); MSA 14.15(7403)(3), a sentencing court may depart from the minimum ten-year term of imprisonment mandated by § 7403(2)(a)(iii) if the court finds on the record that there are substantial and compelling reasons to do so. Here, the trial court specifically acknowledged that it had discretion to sentence defendant to less than the statutory minimum sentence when revoking defendant's bond following conviction. However, at the time of sentencing, it appears from the trial court's comments that the court did not continue to recognize its discretion. Therefore, we remand to the trial court for clarification of the court's understanding of its discretion to depart from the statutory minimum sentence and, if necessary, resentencing. See *People v Sanders*, 193 Mich App 128, 130; 483 NW2d 439 (1992).

Defendant's conviction is affirmed and the case is remanded for proceedings consistent with this opinion. Jurisdiction is not retained.

/s/ E. Thomas Fitzgerald
/s/ Harold Hood
/s/ Gary R. McDonald