

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ARTHUR MOSES,

Defendant-Appellee.

UNPUBLISHED

December 26, 2000

No. 213694

Wayne Circuit Court

LC No. 98-900013

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

PER CURIAM.

Defendant was charged with possession with intent to deliver between fifty and 224 grams of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii). Following a preliminary examination, the district court suppressed defendant's statements and dismissed the charge against defendant because of insufficient evidence. The prosecutor appeals by leave granted the court order affirming the district court's dismissal of the charge against defendant. We reverse and remand.

The prosecutor first argues that the district court erred by suppressing defendant's statements as the fruit of an illegal arrest. A lower court's factual findings when ruling on a motion to suppress are reviewed for clear error and will be affirmed unless we are left with a definite and firm conviction that a mistake has been made. *People v Faucett*, 442 Mich 153, 170; 499 NW2d 764 (1993); *People v Custer*, 242 Mich App 59, 64; ___ NW2d ___ (2000). However, to the extent that a lower court's decision to suppress evidence is based on an interpretation of the law, appellate review is de novo. *People v Kaslowski*, 239 Mich App 320, 323; 608 NW2d 539 (2000).

The district court found that, because defendant was advised of his *Miranda*¹ rights, he was under arrest. The district court also found that no probable cause had been shown to arrest defendant at that time and, therefore, the court held that defendant's statements were inadmissible as the fruit of an illegal arrest. However, in *Michigan v Summers*, 452 US 692; 101 S Ct 2587; 69 L Ed 2d 340 (1981), the Court held that for purposes of the Fourth Amendment, "a

¹ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted.” *Id.* at 705. In arriving at its conclusion, the Court assessed the justification for the detention of an occupant of premises being searched for contraband pursuant to a valid warrant by analyzing the nature of the articulable and individualized suspicion supporting the detention and law enforcement’s interest in preventing flight, minimizing the risk of harm to the officers, and the orderly completion of the search. The Court noted that the execution of a warrant to search for narcotics is the kind of transaction that may give rise to sudden violence or efforts to conceal or destroy evidence, and the risk of harm to police officers is minimized if they are able to exercise command of the situation. Additionally, the orderly completion of the search may be facilitated if the occupants of the premises are present, which serves to avoid the use of force that is not only damaging to property, but may also delay completion of the search. *Id.* at 702-703.

In *People v Zuccarini*, 172 Mich App 11; 431 NW2d 446 (1988), this Court applied the above principles and found that the defendant was lawfully detained, and not arrested, during the execution of a search warrant at his home. *Id.* at 13-14. In that case, the defendant was detained and handcuffed during the execution of a search warrant at his home. The defendant was detained while the police were attempting to gain control over the area to be searched. The defendant was handcuffed mainly for safety reasons and because the officers heard what sounded like other people running inside the house. The defendant was then advised of his *Miranda* rights and afterward showed the officers where the cocaine was located. *Id.* at 14. The defendant argued that his statements regarding the location of the cocaine should have been suppressed as the “fruit of the poisonous tree” stemming from his illegal arrest. *Id.* at 13. However, this Court held that the handcuffing of the defendant was a reasonable, limited intrusion of his liberty under the circumstances and that the fact that the defendant was advised of his *Miranda* rights did not necessarily mean that he was under arrest. *Id.* at 14-15. Thus, this Court affirmed the trial court’s finding that the defendant was not arrested and his statements were not inadmissible as the fruit of an illegal arrest. *Id.* at 15.

The facts in *Zuccarini* are remarkably similar to the facts in the present case. Here, a search warrant was obtained after a controlled drug purchase was made at defendant’s home. The record is not clear whether defendant was involved in that controlled buy, but his name was listed on the search warrant. Defendant was detained and handcuffed at a time when the police were trying to gain control over the residence to be searched. Police officers arrived at the residence and observed defendant getting ready to flee to the back of the residence at the sight of the officers’ presence. As a result, the officers made a forced entry and detained defendant, another occupant, and a third individual who stopped by the house during the execution of the search warrant. An officer stated that the occupants, including defendant, were detained and handcuffed for the safety of the officers in order to secure the premises for weapons and conduct the search. The officer further stated that defendant and the other individuals were not under arrest, but were merely detained for the purpose of executing the search.² Defendant’s handcuffs

² The officer stated that it was policy to read the subject of a search warrant his *Miranda* rights before actually conducting the search. Thus, the giving of *Miranda* rights was in this case was not necessarily indicative of an arrest.

were removed after the search was concluded and substances believed to be cocaine were found. The evidentiary record supports the finding that defendant was detained but not arrested, and therefore, it was error for the district court to suppress defendant's statements as the fruit of an illegal arrest. *Summers, supra* at 452 US 702; *Zuccarini, supra* at 14.

The prosecutor next argues that the district court abused its discretion by dismissing the charge against defendant. When reviewing the sufficiency of the evidence to bind over a defendant, we apply the same standard of review as is applied by the circuit court in reviewing the district court's decision. We determine whether the district court abused its discretion in concluding that there was not probable cause to believe that the defendant had committed the crime. *People v Kieronski*, 214 Mich App 222, 228; 542 NW2d 339 (1995). The charge of possession with intent to deliver between fifty and 224 grams of cocaine requires proof that the defendant (1) knowingly possessed a controlled substance; (2) with intent to deliver this substance to someone else; (3) the substance possessed was cocaine and the defendant knew it was cocaine; and (4) the substance was in a mixture that weighed between 50 and 224 grams. *People v Crawford*, 458 Mich 376, 389; 582 NW2d 785 (1998). Possession may be either actual or constructive and may be joint, with more than one person actually or constructively possessing a controlled substance. Possession may even be found where the defendant is not the owner of the recovered narcotics. *People v Wolfe*, 440 Mich 508, 520-521; 489 NW2d 748, amended 441 Mich 1201 (1992). "The essential question is whether the defendant had dominion or control over the controlled substance." *People v Griffin*, 235 Mich App 27, 34; 597 NW2d 176 (1999) (quoting *People v Konrad*, 449 Mich 263, 271; 536 NW2d 517 (1995)).

It appears from the record that the district court found insufficient evidence to satisfy the first element of the charge, that defendant knowingly possessed the cocaine. The district court stated in its findings of fact that no clear nexus had been established to link the cocaine to defendant and show that the drugs belonged to him. The district court further stated that defendant's suppressed statements probably identified the location of the drugs on the premises, but because those statements were suppressed, no evidence connected defendant to the drugs on the premises other than the fact that he lived there. A person's presence at the location where drugs are found is not sufficient, by itself, to prove constructive possession. "Instead some additional connection between the defendant and the contraband must be shown." *Wolfe, supra* at 520.

Because defendant's statements were suppressed, we are unable to determine whether the statements establish a connection between defendant and the cocaine sufficient to support the inference that defendant exercised dominion and control over the cocaine.³ Accordingly we remand this case to the district court to reconsider the evidence with the admission of defendant's statements to determine whether sufficient evidence was presented to establish probable cause that defendant possessed with the intent to deliver between fifty and 224 grams of cocaine.

³ We note that the record establishes that defendant's statements were made in response to an officer's questions regarding the location of the drugs on the premises. If defendant's statements identified where the drugs were located, than this would establish the knowledge/possession element of the offense sufficient to bind defendant over as charged.

Reversed and remanded. Jurisdiction is not retained.

/s/ Gary R. McDonald

/s/ Janet T. Neff

/s/ E. Thomas Fitzgerald