

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

LARRY CLIFFORD ALLEN,

Defendant-Appellee.

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UNPUBLISHED

December 16, 2004

No. 249857

Wayne Circuit Court

LC No. 03-006254-01

Before: Markey, P.J., and Fitzgerald and Owens, JJ.

PER CURIAM.

Defendant was charged with possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v), and possession of marijuana, MCL 333.7403(2)(d). The trial court dismissed the charges after granting defendant's motion to suppress on the ground that the search exceeded the scope of a valid inventory search. The prosecutor appeals as of right and we reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The prosecutor contends that whatever the validity of the inventory search, the narcotics were lawfully seized pursuant to a valid search incident to arrest. Plaintiff did not raise this issue below and thus it has not been preserved for appeal. *People v Hogan*, 225 Mich App 431, 438; 571 NW2d 737 (1997). "This Court may consider an unpreserved question of law where the facts necessary for its resolution have been presented." *People v Houston*, 237 Mich App 707, 712; 604 NW2d 706 (1999).

This Court reviews a trial court's factual findings at a suppression hearing for clear error, but reviews the ultimate ruling on a motion to suppress de novo. *People v Marcus Davis*, 250 Mich App 357, 362; 649 NW2d 94 (2002). The application of the exclusionary rule is a question of law that is also reviewed de novo. *People v Custer*, 465 Mich 319, 326; 630 NW2d 870 (2001).

Defendant was lawfully arrested without a warrant based on information that he was wanted on a warrant issued by a court. MCL 764.15(1)(e). Once an officer has made a lawful arrest of the occupant of a vehicle, he may search the entire passenger compartment of the vehicle, including any closed containers found therein. *People v Yeoman*, 218 Mich App 406, 412; 554 NW2d 577 (1996); *People v Catanzarite*, 211 Mich App 573, 581; 536 NW2d 570 (1995). A container is any object capable of holding another object, such as glove boxes, consoles and other receptacles. *People v Eaton*, 241 Mich App 459, 463; 617 NW2d 363 (2000).

Although the officer did not testify that he conducted the search incident to defendant's arrest, his state of mind is not relevant for determining the validity of his actions. It is sufficient that the circumstances, when viewed objectively, justify the action taken. *People v Arteberry*, 431 Mich 381, 384; 429 NW2d 574 (1988).

The evidence showed that there was a gap between the glove box and surrounding dashboard and the glove box was not secured to the dashboard housing. The police officer slid the glove box out and discovered the narcotics. Because the area behind the unsecured glove box in defendant's car was capable of holding another object, was readily accessible to defendant while he was in the car and could be easily accessed without the use of tools, we conclude that the area behind the glove box was a container subject to a search incident to arrest. *Eaton, supra* at 464-465 (console housing gearshift is a container subject to search). See also *People v Blakely*, 278 Ill App 3d 704, 707; 663 NE2d 760 (1996) (area behind radio sitting in but not attached to dashboard is a container subject to search); *State v Boursaw*, 94 Wash App 629, 636; 976 P2d 130 (1999) (area behind the dashboard ashtray is a container subject to search).

Reversed and remanded for reinstatement of the charges. Jurisdiction is not retained.

/s/ Jane E. Markey  
/s/ E. Thomas Fitzgerald  
/s/ Donald S. Owens