

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

GREGORY KING,

Defendant-Appellee.

UNPUBLISHED

January 31, 2008

No. 275618

Wayne Circuit Court

LC No. 06-011494-01

Before: Bandstra, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

The prosecutor appeals as of right a circuit court order dismissing three weapons offenses¹ after granting defendant's motion to suppress. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with violating the counterfeit recordings statutes, MCL 752.1052 and MCL 752.1054(2), in addition to the weapons offenses. Upon his arrest for the counterfeit recordings offense, a search of his person produced a loaded revolver. Defendant successfully moved to quash the counterfeit recordings charge on the ground that the evidence did not establish that he was "acting for commercial advantage or private financial gain" because the officers never actually witnessed him selling any recordings. He then argued that, in light of the trial court's ruling on the motion to quash, the officers lacked probable cause to arrest him. The trial court agreed and dismissed the remaining charges.

This Court reviews a trial court's factual findings at a suppression hearing for clear error and reviews the trial court's ultimate ruling on a motion to suppress de novo. *People v Marcus Davis*, 250 Mich App 357, 362; 649 NW2d 94 (2002).

"The Fourth Amendment of the United States Constitution and its counterpart in the Michigan Constitution guarantee the right of persons to be secure against unreasonable searches and seizures." *People v Kazmierczak*, 461 Mich 411, 417; 605 NW2d 667 (2000).

¹ The charges included felon in possession of a firearm, MCL 750.224f, carrying a concealed weapon, MCL 750.227(2), and possession of a firearm during the commission of a felony, MCL 750.227b.

There was no Fourth Amendment violation when the police first approached defendant to investigate, given the absence of any evidence that defendant declined to answer questions or tried to leave. To the contrary, the record shows that the police stopped and questioned defendant, who freely answered their questions and allowed them to examine the recordings, which he admitted were his. See *People v Jenkins*, 472 Mich 26, 33-34; 691 NW2d 759 (2005). Upon examining the recordings, one officer observed that they were in generic jewel cases, that they were on CD-R and DVD-R discs, indicating that they had been recorded from another source, that the print material accompanying them had been photocopied, and that they did not have a studio logo imprint or anything else identifying the manufacturer.

Considering that defendant possessed 586 recordings, that he had them displayed outside on the back of a truck, that he was holding some in his hand, and that people were lined up in front of him, possibly examining the recordings, one could reasonably infer that defendant possessed the CDs and DVDs with the purpose of selling them. Further, considering that the packaging was not prominently marked with the name and address of the manufacturer, one could reasonably infer that defendant knew the recordings were in violation of MCL 752.1053. MCL 752.1052(1)(d). Even assuming that the police lacked probable cause to believe that defendant violated MCL 752.1052(1)(b) or (c), the facts minimally gave the officers probable cause to believe that defendant violated subsection (1)(d), and they could arrest him without a warrant. Once defendant was arrested, the police properly could search his person “for weapons, instruments of escape, and evidence of crime.” *People v Houstina*, 216 Mich App 70, 75; 549 NW2d 11 (1996).

We reverse and remand for reinstatement of the weapons charges. We do not retain jurisdiction.

/s/ Richard A. Bandstra

/s/ Pat M. Donofrio

/s/ Deborah A. Servitto