# STATE OF MICHIGAN

# COURT OF APPEALS

| | |
|---|---|
| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>March 13, 2008 |
| v | No. 276166<br>Kent Circuit Court |
| STEVE BERNARD BOGARD,<br><br>Defendant-Appellant. | LC No. 06-006769-FH |

Before: O'Connell, P.J., and Borrello and Gleicher, JJ.

MEMORANDUM.

Following a jury trial, defendant appeals as of right his conviction for possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv). He was sentenced as a fourth habitual offender, MCL 769.12, to 3 to 20 years in prison. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Police officers, responding to complaints about prostitution and prevalent drug use at a residence, spotted a known prostitute at the location and followed her as she retreated down the driveway along the side of the house and into the backyard. The officers then saw defendant get out of a vehicle parked behind the house and turn away from the officers. One of them ordered him to stop, but instead of complying, defendant fled. Some of the officers then chased defendant and arrested him, while another officer stayed back to police the area and detain other bystanders in the backyard. After defendant's arrest, police found a large amount of money on him. When an officer later returned to the backyard to investigate the scene, he looked through the window of defendant's vehicle and saw a plastic baggy containing crack cocaine sitting in plain view on the center console.

Defendant's sole argument on appeal is that his trial counsel was ineffective for failing to move to suppress the cocaine evidence, which defendant claims was confiscated as a result of an illegal search and seizure. Both the United States and the Michigan constitutions guarantee the right against unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11. Defendant's contention that he had an expectation of privacy in the backyard of the house fails for several reasons. First, the police officers were lawfully present in the backyard because the woman's conduct raised a reasonably articulable suspicion that criminal activity was afoot, allowing police to approach her, temporarily detain her to conduct a reasonable inquiry, and perform a limited search for weapons if necessary. *Terry v Ohio*, 392 US 1, 21-22, 30-31; 88 S Ct 1868; 20 L Ed 2d 889 (1968). After seeing defendant flee from his vehicle, and certainly

following his arrest, the officers legitimately returned to investigate the area from which defendant had fled. See *People v Tisi*, 384 Mich 214, 217-218; 180 NW2d 801 (1970).

Second, even if the police presence in the backyard was not lawful, defendant has no standing to challenge it. For an individual to assert standing to challenge a search, the person must have a legitimate expectation of privacy in the location searched. *People v Powell*, 235 Mich App 557, 560-561; 599 NW2d 499 (1999). In this case, it was not defendant's driveway or backyard that police entered when they followed the woman, so defendant has failed to demonstrate any standing to challenge the officers' entry or return into the yard. See *People v Shankle*, 227 Mich App 690, 693-694; 577 NW2d 471 (1998). The crack cocaine was in plain view from the outside of the vehicle, so under the plain view doctrine, the officers did not violate the Fourth Amendment when they removed it from the vehicle without a warrant. *People v Champion*, 452 Mich 92, 101, 104; 549 NW2d 849 (1996); *Tisi*, *supra*. Under the circumstances, defendant's trial counsel was not ineffective for failing to make a meritless motion to suppress the cocaine found in the vehicle. *People v Knapp*, 244 Mich App 361, 386; 624 NW2d 227 (2001).

Affirmed.

/s/ Peter D. O'Connell
/s/ Stephen L. Borrello
/s/ Elizabeth L. Gleicher