STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TYRONE RICO WALKER,

Defendant-Appellant.

UNPUBLISHED
August 29, 1997

No. 193402
Detroit Recorder's Court
LC No. 95-003419

Before: Saad, P.J., and Neff and Reilly, JJ.

PER CURIAM.

After a bench trial, defendant was convicted of delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and attempted possession with intent to deliver less than fifty grams of cocaine, MCL 750.92; MSA 28.287; MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). Defendant was sentenced to consecutive terms of three to twenty years' imprisonment for the delivery of less than fifty grams of cocaine conviction, and to one to five years' imprisonment for the attempted possession with intent to deliver less than fifty grams of cocaine conviction. Defendant appeals as of right. We affirm defendant's convictions and sentences, but remand for correction of the amended judgment of sentence to accurately reflect the sentences imposed.

I

On March 4, 1995, at approximately 4:10 p.m., Detroit Police Officers David Jackson, Daneil Mitchell and Mark Berger were on patrol in an unmarked scout car in what they described as a "heavy narcotics area," in the City of Detroit. The officers observed defendant and another man, only described as "a white male," standing next to a car in front of 8125 Quinn. The officers observed the white male hand defendant money, and then observed defendant remove a small object from a clear plastic bag, and hand it to the white male. Based on their experience as police officers, they believed the men were engaged in a narcotics transaction.

The officers left their scout car and identified themselves as police officers. Officer Jackson detained the white male and retrieved one ziplock bag of suspected crack cocaine from his right hand. Officer Berger followed defendant as he entered the car near the one next to which he and the white

male had been standing. Officer Berger sat in the driver's seat, ordered defendant out of the car, and retrieved a plastic bag containing suspected crack cocaine from the floor of the driver's seat. The officers arrested defendant and, in addition to the plastic bag, confiscated $620 in cash, some gold jewelry, a pager, and the car in which the plastic bag was found. At trial, the parties stipulated that the plastic bag found in the car contained forty-three packets, five of which were opened and analyzed, and found to contain 0.81 grams of a material containing cocaine. The parties further stipulated that the ziplock bag retrieved from the white male was analyzed and found to contain 0.13 grams of a material containing cocaine.

II

A

Defendant argues that the trial court's findings of fact were insufficient. We disagree. A trial court must make findings of fact in actions tried without a jury. MCR 2.517(A)(1). Findings of fact are sufficient if they are brief, definite, and pertinent, without over elaboration of detail or particularization of facts. MCR 2.517(A)(2). A court's findings of fact are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). Here, the trial court's findings were sufficient.

Defendant next claims that the trial court's findings were insufficient because, although the court found that the officers observed defendant handing "a package" to the white male, the court did not expressly find that the package contained cocaine. However, the parties stipulated at trial that the plastic bag retrieved from the right hand of the white male was analyzed and found to contain 0.13 grams of a material containing cocaine. Accordingly, a remand for further fact finding is not necessary, where, based upon the parties' stipulation, it was implicit that the court was aware that the package contained cocaine. *Smith, supra* at 235; *People v Wardlaw*, 190 Mich App 318, 320-321; 475 NW2d 387 (1991). Defendant also argues that the trial court's finding, that the man to whom defendant handed a package "definitely didn't live in the neighborhood and it [sic] obviously was down there for the purpose of making a purchase," was clearly erroneous. Because the finding was not essential to the court's decision, the error, if any, was harmless. *Id.*

B

Defendant also argues that insufficient evidence was presented to support his convictions. We disagree. In reviewing a sufficiency claim, this Court views the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994).

Here, the officers testified that they observed defendant hand an object to the white male in exchange for money, and that when the white male was apprehended moments later, he was found with a packet in his right hand. Furthermore, the parties stipulated that the packet contained cocaine. Therefore, viewing this evidence in the light most favorable to the prosecution we find that sufficient

evidence was produced to find defendant guilty beyond a reasonable doubt of delivery of less than fifty grams of cocaine. MCL 333.7105(1); MSA 14.15(7105)(1).

The evidence also indicated that, after engaging in a suspected drug transaction, defendant was apprehended in a car with a plastic bag containing forty-three packets of a material containing cocaine. A pager and $620 in cash were also found on defendant's person at the time of his arrest. Therefore, viewing this evidence in the light most favorable to the prosecution, sufficient evidence was presented to find defendant guilty beyond a reasonable doubt of attempted possession with intent to deliver less than fifty grams of cocaine. *People v Jones,* 443 Mich 88, 100; 504 NW2d 158 (1993); *People v Wolfe,* 440 Mich 508, 516-517; 489 NW2d 748, modified 441 Mich 1201 (1992); *People v Metzler,* 193 Mich App 541, 548; 484 NW2d 695 (1992).

C

Defendant next argues that he was denied effective assistance of counsel. We disagree. This Court will find ineffective assistance of counsel only where a defendant demonstrates that counsel's performance fell below an objective standard of reasonableness, and prejudiced the defendant so as to deprive him of his right to a fair trial. *People v Pickens,* 446 Mich 298, 309; 521 NW2d 797 (1994). Because defendant did not move for a new trial or a *Ginther*[1] hearing below, our review is limited to mistakes apparent on the record. *People v Hurst,* 205 Mich App 634, 641; 517 NW2d 858 (1995).

Defendant claims that he was denied effective assistance of counsel because his counsel failed to move to suppress the cocaine on the basis that the cocaine was illegally seized. However, the record does not support defendant's contention. Searches and seizures conducted without a warrant are unreasonable per se, subject to certain specified exceptions. *People v Champion,* 452 Mich 92, 98; 549 NW2d 849 (1996). The recognized exceptions to the warrant requirement include a search incident to a lawful arrest. *Id.* at 115. A search conducted immediately before an arrest may be justified as incident to arrest if the police have probable cause to arrest the suspect before conducting the search. *Id.* at 115. Here, the officers had probable cause to arrest defendant because they observed defendant involved in what they believed to be a narcotics transaction. Therefore, the officers' search and seizure of contraband fell within a recognized exception to the warrant requirement, and defense counsel's failure to challenge the admission of the evidence was not below an objective standard of reasonableness. *Champion, supra* at 115-116; *Pickens, supra* at 309.

Defendant also claims that he was denied effective assistance of counsel because his counsel failed to object to the admission of testimony regarding the discovery of the cocaine. Defendant claims that, because Officer Berger (the police officer who discovered and confiscated the cocaine from the floor of the car) did not testify at trial, the prosecution failed to lay a proper foundation for the admission of this evidence. However, once again, the record does not support defendant's contention. Officer Mitchell testified that he observed Officer Berger remove the plastic bag from the car, Officer Jackson testified that the plastic bag found in the car was placed in a lock seal folder, and the parties stipulated that the plastic bag in the lock seal folder was found to contain cocaine. Therefore, a foundation was laid for the admission of this evidence, and defense counsel's failure to object on this basis was not below an objective standard of reasonableness. *Pickens, supra* at 309

D

Finally, defendant claims that his amended judgment of sentence should be corrected to accurately reflect the sentence imposed for his attempt conviction, or, in the alternative, that he be resentenced.[2] Specifically, defendant claims that the "three to three" years' imprisonment indicated on the amended judgment of sentence for the attempt conviction, be corrected to accurately indicate the one to five years' imprisonment imposed for this conviction at the time of sentencing. The prosecution and this Court agree that the judgment of sentence is inaccurate in this regard. Therefore, we remand for correction of defendant's amended judgment of sentence.

Affirmed and remanded for correction of the amended judgment of sentence. We do not retain jurisdiction.

/s/ Henry W. Saad
/s/ Janet T. Neff
/s/ Maureen Pulte Reilly

[1] *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

[2] Defendant's original judgment of sentence was amended to indicate that his sentences were to run consecutive pursuant to MCL 333.7401(3); MSA 14.15(7401)(3).