

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRUCE H. MCFAUL,

Defendant-Appellant.

UNPUBLISHED

June 25, 1999

No. 207405

Oakland Circuit Court

LC No. 96-144890 FH

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

PER CURIAM.

Defendant appeals by right from his conviction by jury of carrying a concealed weapon, MCL 750.227; MSA 28.424, possession of a controlled substance under 25 grams, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and operating a motor vehicle with expired license plates, MCL 257.255(1); MSA 9.1955(1). We affirm.

Defendant's sole issue on appeal is whether the trial court erred in denying defendant's motion to suppress evidence which was obtained after defendant was stopped for a traffic violation. Defendant claims here, as he did below, that the search and seizure conducted in this case was violative of his right against unreasonable searches and seizures guaranteed by both the United States and Michigan Constitutions. US Const, Am IV; Const, art 1, § 11. We disagree.

Generally, we conduct a de novo review of a trial court's ruling on a motion to suppress the evidence for all mixed questions of fact and law, and for all pure questions of law. *Ornelas v United States*, 517 US 690; 116 S Ct 1657, 1663; 134 L Ed 2d 911, 920 (1996); *People v Marsack*, 231 Mich App 364, 372; 586 NW2d 234 (1998). However, the trial court's findings of fact are reviewed for clear error, with due weight being given to inferences drawn from those facts by the trial court and by the local law enforcement officers. *Ornelas, supra*; *People v Taylor*, 454 Mich 580, 595; 564 NW2d 24 (1997).

The warrantless search of defendant's car and of his person was valid as incident to a lawful arrest. *New York v Belton*, 453 US 454; 101 S Ct 2860; 69 L Ed 2d 768 (1981); *Chimel v*

California, 395 US 752, 763; 89 S Ct 2034; 23 L Ed 2d 685 (1969). Defendant's car was lawfully stopped for the misdemeanor offense of driving a motor vehicle with expired license plates. MCL 257.255(1); MSA 9.1955(1). See *Whren v United States*, 517 US 806, 810; 116 S Ct 1769, 1774; 135 L Ed 2d 89, 98 (1996); *People v Dixon*, 392 Mich 691, 699; 222 NW2d 749 (1974). It is unclear whether the police effectuated defendant's arrest based on this misdemeanor offense, whether defendant was arrested based on their reasonable suspicion that defendant was making a "furtive gesture" of reaching for a gun under his seat, or whether the police arrested defendant based on their plain view of a pistol located under or near defendant's seat in his car. Regardless, we hold that at the time the police lawfully stopped defendant's car, the police *could* have properly and, immediately arrested defendant for driving the car with expired license plates. *Id.* Because the police had the right to arrest defendant on this basis when they stopped his car, the subsequent searches were lawfully conducted incident to an arrest. *Belton, supra*; *Chimel, supra*; *People v Champion*, 452 Mich 92, 115-116; 549 NW2d 849 (1996); *People v Bullock*, 440 Mich 15, 26; 485 NW2d 866 (1992); *People v Arterberry*, 431 Mich 381, 384-385; 429 NW2d 574 (1988); *People v Chapman*, 425 Mich 245, 250-251; 387 NW2d 835 (1986).

The evidence seized during the search of defendant and the vehicle was properly obtained, and the trial court did not err in failing to suppress it.

/s/ Jane E. Markey

/s/ Gary R. McDonald

/s/ E. Thomas Fitzgerald