# STATE OF MICHIGAN

# COURT OF APPEALS

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| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>July 6, 1999 |
| v | No. 207247<br>Muskegon Circuit Court |
| REGINALD BURT,<br><br>Defendant-Appellant. | LC No. 95-138722 FH |

Before: Kelly, P.J., and Gribbs and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction of possession with intent to deliver less than fifty grams of heroin, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). Defendant was sentenced to two to twenty years in prison. We affirm.

The facts of this case are not in dispute. On November 5, 1996, at approximately 6:00 p.m., Norton Shores Police Officer Maycroft was about to serve an arrest warrant on a Mr. Cooper at 2141 Superior Street in Muskegon Heights. While standing on the front porch of the residence, Maycroft observed defendant sitting at a kitchen table moving a white powdery substance around on what appeared to be a blackboard with a credit card or a driver's license. The view into the house was unobstructed. The interior lights were on and there were no drapes or blinds covering the window. Based on the observed activity of defendant, Maycroft radioed for assistance to be provided by the City of Muskegon Heights Police Department. Officer Coleman met Maycroft on the sidewalk at 2141 Superior Street. Coleman observed the same activity as Maycroft and similarly concluded that defendant was engaged in the possession of illegal narcotics.

After witnessing this event, the officers knocked on the door. Defendant came to the door, opened it, came out to the porch, opened the screen door and spoke to the officers. The officers informed defendant that they had an arrest warrant for Mr. Cooper and asked defendant if he was Cooper. Defendant stated that he was not and began to search for some identification. At that time, Coleman asked defendant what he was snorting at the kitchen table. Defendant replied, "Nothing." Coleman then walked past defendant into the home to the kitchen table where he had observed defendant with the presumed narcotics. Coleman saw that the white powdery substance was still on the

table positioned in a straight line. He also observed several small foil packets next to the suspected narcotics.

Defendant was given his *Miranda*[1] warnings while being detained in the living room by Maycroft. After acknowledging his understanding of the warnings, he agreed to be questioned by the officers. When asked what the substance on the table was, defendant stated it was heroin. The substance was then seized by Coleman.

Defendant's first issue on appeal is that the trial court erred by denying his motion to suppress evidence and overruling his objection to the admission of the same evidence at trial. We disagree. The trial court's ultimate decision with regard to a motion to suppress evidence is reviewed de novo. However, the trial court's findings of fact in deciding the motion are reviewed for clear error. A finding of fact is clearly erroneous if, after a review of the entire record, an appellate court is left with a definite and firm conviction that a mistake has been made. *People v Parker*, 230 Mich App 337, 339; 584 NW2d 336 (1998). The decision whether to admit evidence is within the discretion of the trial court and will not be disturbed on appeal absent a clear abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998).

It has long been recognized that the Fourth Amendment prohibits residential searches without warrants unless justified by one of the few established exceptions articulated by the United States Supreme Court. *Payton v New York*, 445 US 573, 590; 100 S Ct 1371; 63 L Ed 2d 639 (1980); *People v Blasius*, 435 Mich 573, 582-583; 459 NW2d 906 (1990). The trial court stated that the police officers did not need a warrant due to the fact that the heroin was in plain view. To seize evidence without a warrant, the plain view doctrine requires only that the officers be lawfully in a position from which they view the item and that the incriminating character of the evidence be immediately apparent. *People v Champion*, 452 Mich 92, 101; 549 NW2d 849 (1996). The seizure of evidence under the plain view doctrine is "permitted in the interest of police convenience." *Coolidge v New Hampshire*, 403 US 443; 91 S Ct 2022; 29 L Ed2d 564 (1971); *Champion, supra*.

Here, defendant's unlawful conduct was witnessed by Maycroft and Coleman while they were legally situated on the porch of the residence. The police were attempting to serve a valid arrest warrant on an individual whom they believed resided at the residence. The police officers were standing lawfully outside the house with an unobstructed view inside. The officers observed defendant using an identification card on a blackboard to form straight lines of a white powdery substance, which the officers' experience led them to believe was a narcotic. The officers saw defendant snort the substance into his nostril through a straw. When the officers knocked on the door, defendant held the door open for them to enter. One officer patted defendant down and detained him while the other officer walked to the kitchen table where the narcotics had been observed. Defendant was placed under arrest and given his *Miranda* rights. After he had been arrested and advised of his rights, the defendant told the officers, in response to their question, that the substance was heroin.

A search conducted immediately before an arrest may be justified as incident to arrest where, as here, the police had probable cause to arrest the suspect before conducting the search. *Champion, supra* at 115-116. An arresting officer is permitted to search the area within the arrestee's control for

weapons, instruments of escape and evidence of crime. *People v Houstina,* 216 Mich App 70, 75; 549 NW2d 11 (1996). The narcotics here were discovered inadvertently, were observed to be the instrumentality of a crime, and were properly seized.

Defendant argues that the police had no justification for not obtaining a warrant before conducting the search and seizure in this case. We do not agree. In addition to the plain view and search incident to arrest doctrines, warrantless searches are also permitted if exigent circumstances exist. *Blasius, supra* at 582. The exigent circumstances exception to the warrant requirement allows police to enter a dwelling if the officers possess probable cause to believe that a crime was recently committed on the premises, and probable cause to believe that the premises contain evidence or perpetrators of the suspected crime. *In re Forfeiture of $176, 598*, 443 Mich 261, 271; 505 NW2d 201 (1993); *People v Davis*, 442 Mich 1, 24; 497 NW2d 910 (1993). The police must also show the existence of an actual emergency on the basis of specific and objective facts which reveal the necessity for immediate action to (1) prevent the imminent destruction of evidence, (2) protect the officers or others, or (3) prevent the escape of a suspect. *In re Forfeiture, supra,* 443 Mich 271; *Blasius, supra* at 593-594.

The *Blasius* Court stated that, "In the context of a removal or destruction of evidence case, the most objective and compelling justification would be an actual observation of removal or destruction of evidence or such an attempt." *Blasius, supra*, 435 Mich 594. While the Court in *Blasius* stated that a mere possibility that evidence would be destroyed is not enough, the Court also held that police officers must show an objectively reasonable basis to believe that risk of destruction or removal of evidence is likely. *Blasius, supra* 435 Mich 594-595.

In this case, Officer Coleman testified the defendant opened the door on the porch to allow the officers entrance. He stated that Officer Maycroft asked if the defendant was Mr. Cooper and the defendant replied in the negative and gave his name as Reginald Burt. Officer Coleman stated the defendant then started fumbling through his pockets and moving back towards the main door. Officer Coleman stated that he followed the defendant and put his foot in the door so the door couldn't close and the defendant stepped inside the residence still fumbling around in his pocket. Officer Coleman then asked the defendant what he was doing at the table and the defendant replied, "Nothing." At trial, Coleman explained that he was concerned that defendant would slam the door and run back into the house and that he was trying to prevent that from happening. He was also concerned that defendant could destroy the evidence by pouring the heroin down the sink. Coleman testified that there were several vehicles in the driveway and that the house was quite large, with three bedrooms and a full basement. He believed there might be other people in the house and wanted to secure the evidence and the defendant quickly. On the facts of this case, the seizure of the heroin and other paraphernalia was clearly justified.

Defendant's second issue on appeal is that the trial court erred by denying defendant's motion to suppress his confession as the fruit of the poisonous tree. The "fruit of the poisonous tree" doctrine calls for the exclusion of evidence only where that evidence was obtained as a result of official impropriety directed against the party moving for suppression. *People v Malone*, 177 Mich App 393, 400; 442 NW2d 658 (1989). The decision whether to admit evidence is within the discretion of the

trial court and will not be disturbed on appeal absent clear abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998).

There is no merit to this issue. Defendant's statement that the substance was heroin was properly admitted as a voluntary statement, given after he had been lawfully arrested and advised of his rights.

Affirmed.

/s/ Michael J. Kelly
/s/ Roman S. Gribbs
/s/ E. Thomas Fitzgerald

[1] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).