STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 28, 2001
v	No. 223797 Oakland Circuit Court
DEBORAH JEAN PIO, Defendant-Appellant.	LC No. 99-167234-FH

Before: Murphy, P.J., and Neff and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right from her conviction by jury of possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v), and her convictions by no contest plea of third-degree retail fraud, MCL 750.356d(4), and contributing to the neglect or delinquency of children, MCL 750.145. The trial court sentenced defendant as a fourth-offense habitual offender, MCL 769.12, to one to fifteen years' imprisonment for the possession conviction, ninety days' imprisonment for the retail fraud conviction, and ninety days' imprisonment for the contributing to the neglect or delinquency of a minor conviction. We affirm.

Defendant's claims on appeal arise out of a search conducted at the Southfield jail annex after defendant was arrested for retail fraud, a misdemeanor. During normal booking procedures, including a patdown frisk, a male deputy felt a bulge in defendant's groin area. A female deputy then escorted defendant to a more private area, a locker room, to conduct a patdown search. The female deputy instructed defendant to place her hands against the lockers, but defendant repeatedly pulled her hands down while the female deputy was attempting to frisk her. The female deputy felt a hard object in defendant's groin area, which she believed to be a weapon; more specifically, the butt of a gun. The female deputy called for assistance, and the male deputy held defendant's hands against the lockers while the female deputy lifted defendant's dress, reached into defendant's underwear, and pulled out from defendant's groin area a washcloth that contained several items, including a steel "jewelry" canister. Items found included fourteen packaged rocks of cocaine, a mirror with dirt or powder on it, scissors, a pack of matches, a couple of lighters and screens from lighters, razor blades, a small piece of glass that looked like a broken crack pipe, a nut picker, and a straw. According to the female deputy, the wash cloth bundle was approximately six inches long, four inches wide and three inches thick. The items recovered were not inside defendant's vaginal area.

Defendant argues that the trial court erred in denying defendant's motion to suppress evidence obtained during the search at the jail. We disagree. We review a trial court's factual findings at a suppression hearing for clear error. *People v Oliver*, 464 Mich 184, 191; 627 NW2d 297 (2001); *People v Adams*, 245 Mich App 226, 230; 627 NW2d 623 (2001), citing *People v Kowalski*, 230 Mich App 464, 472; 584 NW2d 613 (1998). A finding of fact is clearly erroneous if, after a review of the entire record, this Court is left with a definite and firm conviction that a mistake has been made. *In re SLL*, 246 Mich App 204, 208-209; 631 NW2d 775 (2001). Questions of law relevant to a suppression issue are reviewed de novo. *People v Custer*, 465 Mich 319, 326; 630 NW2d 870 (2001).

Defendant first claims that the search violated her federal and state constitutional right to be free from an unreasonable search, and thus the evidence obtained during the illegal search is prohibited by the exclusionary rule. According to defendant, the female deputy violated her reasonable expectation of privacy when the deputy put her hand into defendant's underpants and extracted the evidence in question. After citing general principles of constitutional law, defendant suggests that here "the general rule that body intrusions are improper must be appled [sic, applied] to prevent the unlawful intrusion into the most intimate part of a person's body." We find defendant's argument without merit.

The federal and state Constitutions guarantee the right to be free from unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11; *People v Champion*, 452 Mich 92, 97; 549 NW2d 849 (1996). However, a search incident to an arrest "is justified by the fact that when a person is taken into official custody it is reasonable to search for weapons, instruments of escape, and evidence of crime." *People v Houstina*, 216 Mich App 70, 75; 549 NW2d 11 (1996). "In conducting a patdown search, an officer may seize items that the officer has probable cause to believe are contraband from the plain feel." *Custer, supra* at 331. To the extent that defendant asserts a violation of her right to privacy, the test to determine if a person has a protected Fourth Amendment privacy right is "whether the defendant had an expectation of privacy in the object of the search and seizure and whether that expectation is one that society is prepared to recognize as reasonable," after considering the totality of the circumstances. *People v Perlos*, 436 Mich 305, 317-318; 462 NW2d 310 (1990), quoting *People v Smith*, 420 Mich 1, 28; 360 NW2d 841 (1984).

Here, defendant does not dispute that the search was legal. In fact, during the evidentiary hearing, defendant conceded that the female deputy had reasonable cause to continue the search because she felt something that she believed was a weapon. On appeal, defendant focuses on defendant's right to privacy and on how the female deputy obtained the evidence from defendant. In essence, defendant argues not that the search itself was unreasonable, but that the retrieval of the suspicious object from defendant's underpants violated her expectation of privacy. The female deputy's testimony reveals that while in a private area, in a locker room, and while a male deputy held defendant's hands against the lockers because defendant kept putting her arms down and trying to twist back around, the female deputy, who believed on the basis of her patdown frisk that defendant was carrying a concealed weapon, lifted defendant's dress, reached into defendant's underwear and pulled out a washcloth containing numerous items. Were it not for defendant's behavior and noncompliance with the female deputy's direction to leave her hands against the lockers so the female deputy could execute the search, the male deputy would not

have been present. From this record, it is apparent that the safety of the deputies as well as others present in the jail annex were at stake if defendant were concealing a weapon. Under these circumstances, we do not find the method of the search and the manner of retrieval of the items unreasonable. Nor do we find that plaintiff's right to privacy was implicated where there is no evidence on the record that any of her clothing was removed or that a private area was exposed. We find no constitutional violation.

Defendant next argues that the evidence obtained during the search should have been suppressed because the search violated MCL 764.25a, the strip-search act. Defendant contends that, pursuant to MCL 764.25a,[1] the deputy was required to obtain written authorization prior to conducting the search. We find this argument without merit.

Under the circumstances in the present case, we find the strip-search act inapplicable. Clearly, after the male deputy identified a suspicious object during a routine patdown search, he acted appropriately in requesting that the female deputy continue the search. The female deputy took defendant to a private area to conduct a patdown search. Again, were it not for defendant's behavior and noncompliance with the female deputy's direction to leave her hands against the lockers, the male deputy would not have been present. Further, the evidence at issue was not found during a search where the accused was required "to remove his or her clothing to expose underclothing, breasts, buttocks, or genitalia." MCL 764.25a(1). There is no evidence that defendant was required to remove any of her clothing or that her "underclothing, breasts, buttocks, or genitalia" were exposed when the female deputy lifted her dress and reached into defendant's underpants to remove the suspicious object. Under these circumstances, we find the strip-search act inapplicable.

Defendant also argues that the police violated the interim bond provisions of the release of misdemeanor prisoners act (interim bond act), MCL 780.581 *et seq*. Because defendant did not challenge the admissibility of the evidence on the ground now raised on appeal, this issue was not properly preserved for our review. *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994); *People v Connor*, 209 Mich App 419, 422; 531 NW2d 734 (1995). Thus, appellate

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[1] MCL 764.25a provides statutory protection from unreasonable strip-searches conducted on arrestees detained for a misdemeanor offense. Specifically, the statute provides that a person arrested or detained for a misdemeanor offense shall not be strip-searched unless both of the following occur:

> (a) The person arrested is being lodged into a detention facility by order of a court or there is reasonable cause to believe that the person is concealing a weapon, a controlled substance, or evidence of a crime.
>
> (b) The strip search is conducted by a person who has obtained prior written authorization from the chief law enforcement officer of the law enforcement agency conducting the strip search, or from that officer's designee . . . . [MCL 764.25a(2)(a) and (b).]

review is precluded absent a showing of plain error that affected defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764, 774; 597 NW2d 130 (1999).

Defendant has failed to demonstrate outcome determinative plain error and thus is entitled to no relief. *Carines, supra*. Even assuming that there was police error in failing to inform defendant of her right to post bond,[2] defendant, who was obviously under the influence of either drugs or alcohol and who passed out minutes after the search and was taken to a hospital, would still not have been entitled to release because she was under the influence of an intoxicant and/or controlled substance. MCL 780.581(3).

Affirmed.

/s/ William B. Murphy
/s/ Janet T. Neff
/s/ Joel P. Hoekstra

[2] Because this issue was not raised below, the record is not clear regarding whether the police or the deputies advised defendant of her right to post an interim bond.