

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK ANDRE RAY,

Defendant-Appellant.

UNPUBLISHED

December 11, 2008

No. 280730

St. Clair Circuit Court

LC No. 07-000427-FH

Before: Cavanagh, P.J., and Jansen and Meter, JJ.

PER CURIAM.

Defendant appeals by right his jury-trial convictions of possession with intent to deliver methamphetamines, MCL 333.7401(2)(b)(i), and possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv). We affirm. This appeal has been decided without oral argument. MCR 7.214(E).

Defendant argues that the trial court erred by refusing to grant him a new trial on the ground that counsel was ineffective for failing to move for suppression of the evidence found on defendant after his arrest. Defendant maintains that the officers were not authorized to detain or arrest him pursuant to the search warrant for the apartment where he was allegedly involved selling narcotics. He contends that, even though he was named in the warrant for the apartment, this did not provide sufficient probable cause for his arrest.

We review a trial court's decision to grant or deny a motion for a new trial for an abuse of discretion. *People v Cress*, 468 Mich 678, 691; 664 NW2d 174 (2003).

We agree with the trial court's analysis in its opinion denying defendant's motion for a new trial. Pursuant to *People v Cipriano*, 431 Mich 315, 342-343; 429 NW2d 781 (1988), the fact that some of the officers involved may have thought they were arresting defendant under the warrant is not dispositive, even assuming *arguendo* that the search warrant alone did not constitute sufficient probable cause to justify the arrest:

[T]he terminology used to effectuate an arrest is not determinative. See, e.g., *People v Hamoud*, 112 Mich App 348, 351; 315 NW2d 866 (1981); *People v Cook*, 153 Mich App 89, 91; 395 NW2d 16 (1986); *People v Simmons*, 134 Mich App 779, 783; 352 NW2d 275 (1984) An arresting officer's subjective characterization of the circumstances surrounding an arrest does not determine its

legality. Rather, probable cause to justify an arrest has always been examined under a standard of objective reasonableness without regard to the underlying intent or motivation of the officers involved. *Michigan v DeFillippo*, 443 US 31, 37; 99 S Ct 2627; 61 L Ed 2d 343 (1979); *Beck v Ohio*, 379 US 89; 85 S Ct 223; 13 L Ed 2d 142 (1964); *Henry v United States*, 361 US 98; 80 S Ct 168; 4 L Ed 2d 134 (1959); *Brinegar v United States*, 338 US 160; 69 S Ct 1302; 93 L Ed 1879 (1949).

In the instant case, the record indicates that there was independent probable cause for the police to arrest defendant. An officer involved in the investigation of narcotic sales at the home testified that he had arranged two controlled purchases from defendant shortly before the officers executed the search warrant, and had personally witnessed at least one purchase. In addition, defendant was observed leaving the home shortly before the search warrant was executed. Additional testimony about defendant's furtive behavior as an officer followed him also supported a finding that the officers had probable cause to believe that defendant was involved in narcotics trafficking at the time of his arrest. Because probable cause existed to arrest defendant, the evidence obtained from the subsequent search incident to arrest was properly admissible. See *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996) (observing that "[a] search of a person incident to an arrest requires no additional justification"). This conclusion renders defendant's concurrent ineffective assistance claim without merit as well, as counsel is not ineffective for failing to raise meritless or futile objections. *People v Moorer*, 262 Mich App 64, 76; 683 NW2d 736 (2004). The trial court did not err by declining to grant defendant a new trial on this ground. *Cress, supra* at 691.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Patrick M. Meter