STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 11, 2012
v	No. 304715 Washtenaw Circuit Court
RONALD GENE BEY, Defendant-Appellant.	LC No. 06-000212-FH

Before: O'CONNELL, P.J., and CAVANAGH and DONOFRIO, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of delivery or manufacture of heroin in an amount less than 50 grams, MCL 333.7401(2)(a)(iv). Defendant appeals as of right. We affirm.

Defendant's conviction arose after a police stop of the car in which defendant was a passenger. Prior to the stop, police officers had observed the car stop at a residence where police believed a homicide suspect was located. Defendant, whose physical characteristics matched those of the homicide suspect, walked to the residence door and then returned to the car. The police followed the car and stopped the car after the driver executed a turn without using a turn signal. After the car stopped, the police smelled and saw marijuana in the car. They arrested defendant for possession of marijuana and took him to jail. Jail officials searched defendant pursuant to jail policy. While searching defendant, jail officials found heroin concealed on defendant's body.

Defendant subsequently moved the trial court for the suppression of the heroin evidence on the ground that the initial stop was illegal. The trial court denied defendant's motion on the basis of a police officer's preliminary examination testimony that the stop arose from the driver's failure to signal before turning. Defendant now argues that the trial court erred in denying his motion to suppress. We review a trial court's findings of fact in a suppression hearing for clear error, but review de novo a trial court's ruling a motion to suppress. *People v Hyde*, 285 Mich App 428, 438; 775 NW2d 833 (2009).

The right against unreasonable searches and seizures is guaranteed by both the United States and Michigan Constitutions. US Const, Am IV; Const 1963, art 1, § 11. A court is required to suppress evidence that was otherwise lawfully seized as a result of a traffic stop only if the traffic stop was unreasonable. See *People v Davis*, 250 Mich App 357, 363-364; 649 NW2d 94 (2002). A traffic stop is reasonable where a police officer has "an articulable and

reasonable suspicion that a vehicle or one of its occupants is subject to seizure for a violation of law," *People v Williams*, 236 Mich App 610, 612; 601 NW2d 138 (1999), or the officer has probable cause to believe that the driver of a vehicle has violated a traffic law, *Davis*, 250 Mich App at 363.

Defendant argues that there was insufficient evidence to support the trial court's finding that a traffic violation occurred, because one of the police officers involved in the stop did not testify. However, the testifying officer's statements provided the trial court with sufficient evidence to find that a traffic violation occurred. We are not left with a "definite and firm conviction that a mistake has been made," as required to find clear error in the trial court's finding. *Hyde*, 285 Mich App at 438.

In regard to the legality of the stop itself, the officer had a reasonable suspicion that defendant was a homicide suspect. See *People v McKinley*, 255 Mich App 20, 27; 661 NW2d 599 (2003). Also, the driver's failure to use a turn signal provided probable cause that a traffic violation occurred. *Davis*, 250 Mich App at 363; *People v Haney*, 192 Mich App 207, 210-211; 480 NW2d 322 (1991); MCL 257.648. The trial court did not err in denying defendant's motion to suppress.

Defendant also argues that his arrest was illegal and that defense counsel was ineffective for failing to move for the suppression of the subsequent discovery of the heroin. The questions presented by a claim of ineffective assistance of counsel are mixed questions of law and fact; findings of fact by the lower court, if any, are reviewed for clear error, and questions of constitutional law are reviewed de novo. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). Our review in this case is limited to mistakes apparent on the record. *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002). To establish ineffective assistance of counsel, a defendant must "show that his attorney's representation fell below an objective standard of reasonableness and that this was so prejudicial to him that he was denied a fair trial." *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000), citing *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984).

The search that revealed the heroin in this case was conducted without a warrant, and "[s]earches and seizures conducted without a warrant are unreasonable per se, subject to several specifically established and well-delineated exceptions." *People v Borchard-Ruhland*, 460 Mich 278, 293-294; 597 NW2d 1 (1999). One exception is the inventory-search exception, which allows inventory searches of arrested persons when "the underlying arrest was valid and the search was conducted by the police in accordance with standardized department procedures." *People v Houstina*, 216 Mich App 70, 77; 549 NW2d 11 (1996). A police officer may make a warrantless arrest where there is probable cause to believe that the defendant committed a crime. MCL 764.15; *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996). In this case, defendant was arrested for possession of marijuana. "Possession is a term that 'signifies dominion or right of control over the drug with knowledge of its presence and character.'" *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000), quoting *People v Maliskey*, 77 Mich App 444, 453; 258 NW2d 512 (1977). Possession of an illegal substance "may be joint as well as exclusive." *People v McKinney*, 258 Mich App 157, 166; 670 NW2d 254 (2003).

Here, two police officers testified that they saw a bag of marijuana sitting on top of a purse in the vehicle. Their testimony indicated that the marijuana was within defendant's reach. This evidence showed that defendant both knew about and possessed, either jointly or exclusively, the marijuana. See *People v Cohen*, 294 Mich App 70, 77; 816 NW2d 474 (2011). A person of reasonable caution could believe that defendant was guilty of possession of marijuana, and that the officers had probable cause to arrest defendant. *Champion*, 452 Mich at 115. Thus, the arrest underlying defendant's inventory search was valid, and the heroin was properly discovered and seized. *Houstina*, 216 Mich App at 77. Defense counsel was not required to argue a frivolous or meritless motion to suppress the heroin evidence. *People v Gist*, 188 Mich App 610, 613; 470 NW2d 475 (1991). Because defendant was not entitled to the suppression of that evidence, defendant has not shown that his defense counsel's representation fell below an objective standard of reasonableness.[1]

Affirmed.

/s/ Peter D. O'Connell
/s/ Mark J. Cavanagh
/s/ Pat M. Donofrio

[1] Defendant also argues that his arrest was invalid on the ground that statements heard when a police officer answered defendant's cellular phone were insufficient probable cause for the arrest. However, the telephone statements were not the basis of defendant's arrest. Rather, the record indicates that defendant's arrest arose from the officers' observation of marijuana. Given that the marijuana provided probable cause for defendant's arrest, defense counsel could not have challenged the telephone statements on the ground asserted by defendant on appeal.