

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MONRE JOHNSON WILCOX,

Defendant-Appellant.

UNPUBLISHED

May 17, 1996

No. 166195

LC No. 92-012316

Before: White, P.J., and Holbrook, Jr., and P.D. Schaefer,* JJ

PER CURIAM.

Following a bench trial, defendant was convicted of delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and of possession of less than twenty-five grams of heroin, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v). He was sentenced to lifetime probation and now appeals, challenging the court's denial of his motion to suppress evidence. We affirm the cocaine delivery conviction, and remand on the possession of heroin conviction.

On October 17, 1992, Detroit Police Officer Nathaniel Coleman approached Kenneth Brooks outside defendant's home and asked if he was "straight." Brooks told Coleman that he could not go inside if he did not know anyone, but that Brooks would "hook him up." Coleman gave Brooks \$20 in bills with prerecorded serial numbers. Coleman saw Brooks go into the house and hand something to defendant. Defendant handed something to Brooks in exchange. Brooks then returned to Coleman and handed him a rock of cocaine. Coleman left and informed an arrest team of three other officers of the successful undercover buy. The arrest team then went to the house, arrested Brooks on the front lawn, and entered the house in order to arrest defendant. The arrest team did not obtain an arrest or search warrant prior to entering the house .

Detroit Police Officer Arthur Brown was part of the arrest team. Brown entered the house with the intent of arresting defendant, and saw a woman in the front room discard two bundles which turned out to be coin packs of heroin. This woman was later identified as Sonja Pipes, defendant's girlfriend.

* Circuit judge, sitting on the Court of Appeals by assignment.

Following his arrest, defendant told Detroit Police Officer Curtis Goode that the heroin was his, that he had it for personal use, and that he had handed it to Pipes to hide.

Defendant's trial counsel moved to suppress the evidence on the basis that defendant's warrantless arrest in his home was unlawful and there were no exigent circumstances. The pretrial judge denied the motion, initially questioning whether defendant had standing to challenge admission of the heroin when the police obtained the heroin from Pipes rather than defendant, and later concluding that defendant's case law was distinguishable because in the instant case the police entered without a warrant with the purpose of arresting defendant, not to search his home. Defendant later moved to suppress the same evidence before the trial judge, who denied the motion, stating that he could not overrule another judge.

The trial court found defendant guilty of delivering the cocaine to Brooks. However, the court found that there was no evidence that defendant intended to deliver the heroin, and so found defendant guilty of possession only.

A trial court's findings of fact in a motion to suppress ordinarily will not be reversed unless clearly erroneous. *People v Bordeau*, 206 Mich App 89, 92; 520 NW2d 374 (1994). However, application of constitutional standards by a trial court is not entitled to the same deference. *Id.*

Under the Fourth Amendment, warrantless searches and seizures inside a home are presumptively unreasonable. *Payton v New York*, 445 US 573, 586; 100 S Ct 1371; 63 L Ed 2d 639 (1980). Thus, although police may arrest a suspect in a public place without a warrant so long as they have probable cause to arrest, a warrantless entry into a home is unconstitutional even where police have probable cause to believe that a person inside the home has committed a felony. *Payton*, 445 US 587-588, 589-590. Exigent circumstances may provide an adequate justification to overcome the need for a warrant to enter a home and arrest a suspect. *Id.* But, where police arrest a suspect in his home without a warrant, and without exigent circumstances which would justify their immediate entry without a warrant, any evidence obtained pursuant to a search incident to that arrest must be suppressed. *Id.*

The rule of *Payton* does not require suppression of statements made by a suspect who is arrested in his home without a warrant, where the police had probable cause to arrest the defendant, and the statements were made to police outside of the illegally-entered premises. *New York v Harris*, 495 US 14, 17; 110 S Ct 1640; 109 L Ed 2d 13 (1990). However, such statements can be regarded as the fruits of an illegal search or arrest where they bear a sufficiently close relationship to the underlying illegality so as to be considered "fruit of the poisonous tree." *Id.*, at 19; *Wong Sun v United States*, 371 US 471; 83 S Ct 407; 9 L Ed 2d 441 (1963).

Here, the court erred in its blanket denial of defendant's motion to suppress. The court should have determined whether the warrantless entry was justified, and if not, what evidence should have been suppressed as the fruit of an illegal search.

We remand for reconsideration of defendant's motion in light of *Payton* and *Harris*, and any pertinent case law cited to the court on remand. If any evidence is suppressed, defendant shall be granted a new trial on the possession charge. Our remand is confined to the possession charge, which was based on evidence garnered after the allegedly illegal entry. Defendant's conviction for delivery of cocaine need not be reversed. The pertinent evidence supporting this conviction arose legally from events that occurred prior to defendant's arrest, and was not obtained pursuant to the entry of defendant's home. Admission of the additional evidence regarding the secret service funds was harmless.

We affirm defendant's conviction of delivery of less than fifty grams of cocaine. We vacate defendant's conviction on the possession charge and remand to the Recorder's Court for further proceedings. If any evidence is suppressed, defendant shall be granted a new trial on the possession charge. If the motion is denied, the conviction shall be reinstated. We do not retain jurisdiction.

/s/ Helene N. White

/s/ Donald E. Holbrook, Jr.

/s/ Philip D. Schaefer