STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee

v

SHAWN TURNER,

Defendant-Appellant.

UNPUBLISHED
March 14, 1997

No. 189419
Oakland Circuit Court
LC No. 93-130056

Before: Young, P.J., and Gribbs and S.J. Latreille,* JJ.

PER CURIAM.

Defendant entered a conditional plea to possession with intent to deliver less than 50 grams of cocaine. MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). As defendant's second narcotics offense conviction, he received an enhanced sentence pursuant to MCL 333.7413(2); MSA 14.15(7413)(2), of three to forty years of imprisonment. Defendant appeals as of right. We affirm.

Before his arrest, defendant had been under police surveillance for several months. Using an informant, the police learned that defendant was selling crack cocaine, and on the basis of this information and evidence obtained from controlled buys, the police obtained a warrant to search defendant and his residence. At his preliminary examination, Pontiac Police Officer William Pummill testified that after obtaining the search warrrant, he and his fellow officers waited for defendant in the "raid van" outside defendant's residence. From the van, they could see defendant's building and the adjacent parking lot. When defendant drove into the parking lot, Officer Pummill and the other officers approached defendant and ordered him to halt as he was getting out of his vehicle. The officers then forced defendant to the ground attempting to handcuff him. Defendant struggled with the officers and was able to get his right hand free. Officer Pummill testified that defendant's right fist was clenched as he raised it to his mouth, as if he was "stuffing" something in his mouth. After the officers subdued defendant and handcuffed him, Officer Pummill informed the others that defendant placed something in his mouth, and they tried to pry open his mouth to see what was in there. They were able to open his mouth slightly and could see a "baggie" in the back of his throat.

At this point, the defendant started having labored breathing, and whatever he swallowed had become stuck in his throat. Officer Pummill observed that defendant needed medical attention. Two officers in a marked police vehicle, who were assisting the raid team, arrived and transported defendant to the hospital emergency room across the street. Officer Pummill testified that defendant was still having difficulty breathing, and it appeared that he was passing out and losing consciousness. In the emergency room, medical personnel pulled a large baggie containing small bags of crack cocaine from defendant's throat. Concerned that defendant had ingested some of the narcotics, medical personnel pumped defendant's stomach, and two additional rocks were extracted.

Defendant filed a motion to suppress the seized cocaine. In denying his motion , the trial court ruled that the police did not act illegally in waiting for defendant in the parking lot of his residence and asking him to stop and search him because defendant himself was named in the search warrant.

Defendant argues that the police illegally arrested him such that the cocaine seized incident to that arrest should have been suppressed because it was the fruit of an illegal arrest. In making this argument, defendant contends that (1) the affidavit in support of the search warrant contained false information, (2) because the search warrant was invalid, the police had no authority to search and/or arrest defendant. We disagree.

The search warrant in this case authorized the search of the premises and search of the defendant's person. Defendant asserts that the search warrant was based upon false information because the address listed in it was inaccurate. If a warrant accurately describes the place to be searched and the police made efforts to ascertain the address to be searched, an inaccurate address does not require the suppression of evidence. *People v Westra*, 445 Mich 284, 285; 517 NW2d 734 (1994). Further, because the crack cocaine was seized from defendant's person and not the premises listed in the warrant, this error would not invalidate that seizure.

Defendant alternatively contends that, the police had no probable cause to stop or detain defendant even if the search warrant was valid. Defendant argues that at best, the warrant only gave the police authority to search, but not arrest, defendant at his residence. On this point, defendant is correct. In *People v Johnson*, 431 Mich 683; 431 NW2d 825 (1988), the Supreme Court held that a search warrant cannot be treated as a judicial finding of probable cause to arrest. *Id*. at 690. Although the lower court properly denied defendant's motion to suppress, the lower court erred in reasoning that the warrant provided probable cause for the police to detain and search defendant.[1]

Nevertheless, the *Johnson* Court recognized that a warrant was not generally required to accomplish an arrest, as long as the police have probable cause to believe that the defendant committed a felony. *Id.* at 690-691. Defendant contends that he simply drove his car into the parking lot when the police arrested him, and therefore, they had no probable cause to stop and/or arrest him. Yet, probable cause can be based on facts within the police officer's knowledge and is not solely dependent upon what happened at the time of the arrest. The *Johnson* Court explained, that the police officer's determination of probable cause could be based upon information that the police officer obtained before seeking or executing the search warrant. *Id*. at 690.

In this case, Officer Pummill had investigated defendant over a period of several months, and as recently as two days before obtaining the warrant, executed another "controlled buy" with the informant. Consequently, the arresting officers had an independent basis to establish probable cause to believe that defendant committed a felony. See *People v Collier*, 183 Mich App 473, 475-476; 455 NW2d 313 (1989) (holding that tip from reliable informant supplied probable cause to arrest). Thus, defendant's arrest was valid. Consequently, the search of defendant's mouth incident to that arrest was also valid. *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996).[2]

Affirmed.

/s/ Robert P. Young, Jr.
/s/ Roman S. Gribbs
/s/ Stanley J. Latreille

[1] The lower court's rationale apparently was based on the United States Supreme Court holding in *Michigan v Summers*, 452 US 692; 101 S Ct 2587; 69 L Ed 2d 340 (1981). In *Summers*, the Supreme Court held that a valid search warrant carries with it the implicit authority to detain persons on the premises while a proper search was conducted. Because defendant was actually arrested independent of any search of the premises named in the search warrant, *Summers* is inapplicable to these facts.

[2] A search must also be reasonable to be constitutionally valid. *People v Holloway*, 416 Mich 288, 301-302; 330 NW2d 405 (1982). As recognized in *Holloway*, the seizure of evidence swallowed by a defendant could be valid under the "exigent circumstances" exception. In *Holloway*, as in this case, the defendant had swallowed something that the officer suspected was narcotics. When the police officer ordered defendant to spit it out and warned that he would forcibly open his mouth, defendant refused. *Id*. at 294. The police officer then forced opened defendant's mouth and retrieved narcotics from his mouth. *Id*. The Court held that the police conduct was reasonable based on the information that they had available at the time. *Id*. at 302. Moreover, because there was a risk that defendant was destroying evidence of the crime and obtaining a search warrant would be impractical, these exigent circumstances justified the intrusion. *Id*. Because the same has been shown in this case in addition to the added fact that defendant began to choke on what he swallowed, the police officers acted reasonably in taking defendant to the hospital to extract the plastic bags of crack cocaine.