STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MICHAEL J. HARPER,

Defendant-Appellee.

UNPUBLISHED
May 30, 1997

No. 193956
Oakland Circuit Court
LC No. 93-127590 FH

Before: Saad, P.J., and Hood and McDonald, JJ.

MEMORANDUM.

The prosecutor appeals by right from an order of the Oakland Circuit Court, granting defendant's motion to suppress evidence. We reverse.

The arresting officer's motivation in resolving to arrest defendant for violation of a Pontiac ordinance is irrelevant to a search and seizure analysis. So long as the officer had probable cause to believe that a violation of the ordinance had occurred in his presence, he had authority to arrest, even if his intent was to seek evidence of a more serious crime. *Whren v United States*, 517 US ___; 116 S Ct 1769; 135 L Ed 2d 89 (1996). Here, the district court, which is presumptively familiar with local ordinances, *People v Steiner*, 236 Mich 618; 211 NW 30 (1926), after conducting an evidentiary hearing, concluded that the arresting officer did have probable cause to believe that a violation of the ordinance had occurred in his presence, thereby justifying the decision to arrest. The circuit court, which refused despite the prosecutor's objection to conduct its own evidentiary hearing, see *People v Talley*, 410 Mich 378, 382; 301 NW2d 809 (1981), having elected not to find the facts independently, was required to accept the findings of historical fact made by the district court unless clearly erroneous. *Ornelas v United States*, 517 US ___; 116 S Ct 1657; 134 L Ed 2d 911, 920 (1996). No claim of clear error as to the facts was made in the circuit court or has been made in this Court, and accordingly the requisite probable cause necessary to legitimize the decision to arrest, based on the factual observations of the arresting officer, was established. Accordingly, the evidence seized was not the product of an illegal arrest and suppression of the evidence was erroneous.

The circuit court did not actually rule that the charges should be reduced from possession with intent to deliver to simple possession of cocaine. However, the circuit judge did indicate that such was his intention, and for purposes of remand this Court notes that in the absence of a motion to quash and a finding that the examining magistrate abused his discretion in finding sufficient evidence to bind defendant over on the possession with intent to deliver charge, the circuit court has no jurisdiction to reduce the charges. *People v Honeyman*, 215 Mich App 687 (1996).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ Harold Hood
/s/ Gary R. McDonald