

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DALE JOSEPH CLARK,

Defendant-Appellant.

UNPUBLISHED

June 3, 1997

No. 191633

Gratiot Circuit Court

LC No. 95-3127-8 FH

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

MEMORANDUM.

Defendant appeals his jury convictions for possession with intent to deliver marijuana and possession of LSD by right. He first challenges the propriety, under the Fourth Amendment, of the manner in which the evidence against him was discovered by police.

Defendant was a passenger in a motor vehicle, which was stopped for speeding and for an equipment violation. No claim is made by defendant that Melissa Coffin was not speeding or that the police lacked a reasonable basis for believing that an equipment violation was occurring. Accordingly, for Fourth Amendment purposes the stop was valid. *Whren v United States*, 517 US ___; 116 S Ct 1769; 135 L Ed 2d 89 (1996).

After the initial stop, one police officer dealt with Coffin, the driver, while a second officer asked defendant for identification. Defendant supplied a false identity, and after ascertaining this deception, the second officer ordered defendant to step out of the vehicle. This directive was valid under the Fourth Amendment. *Maryland v Wilson*, ___ US ___; 117 S Ct 882; ___ L Ed 2d ___ (1997). In light of the fact that defendant had supplied a false identity, the totality of the circumstances made reasonable this officer's decision to subject defendant to a patdown search for weapons. *People v Champion*, 452 Mich 92, 99-100; 549 NW2d 849 (1996). This frisk of defendant's person revealed a plastic bag containing marijuana concealed in the crotch of defendant's pants, the contraband nature of which was immediately apparent to the officer. Accordingly, retrieval of the item comes within the "plain feel" exception to the warrant requirement of the Fourth Amendment. *People v Champion, supra*, 452 Mich at 110 ff. Having discovered this contraband, any further search of defendant's person or of the

vehicle was properly incident to arrest, and therefore again consistent with the Fourth Amendment. *People v Champion, supra*, 452 Mich at 115 ff.

Defendant's remaining argument on appeal is that the district court erred in dismissing these charges without prejudice where his statutory right to preliminary examination within twelve days was violated. Under *People v Weston*, 413 Mich 371; 319 NW2d 537 (1982), this was the proper remedy. Moreover, the arguments made in support of the contention that *Weston* was wrongly decided are without merit. Preliminary examination is not a constitutionally based procedure, *People v Hall*, 435 Mich 599, 603; 460 NW2d 520 (1990), and any errors which occur at preliminary examination will almost uniformly be deemed harmless if the defendant is subsequently convicted at an otherwise fair trial. *Id.*, 435 Mich at 611 ff.

Affirmed.

/s/ Henry William Saad

/s/ Harold Hood

/s/ Gary R. McDonald