STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT GARY ROBINSON,

Defendant-Appellant.

UNPUBLISHED
April 15, 1997

No. 198760
Oakland Circuit Court
LC No. 93-124992-FH
ON REMAND

Before: Saad, P.J., and Neff and Jansen, JJ.

PER CURIAM.

Defendant pleaded guilty of carrying a concealed weapon, MCL 750.227; MSA 28.424, and delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). For those respective convictions, he was sentenced to consecutive terms of one-half to five years' imprisonment and two to twenty years' imprisonment. Defendant appealed his conviction as of right to this Court, which held that the issues were waived as a result of his unconditional guilty plea. *People v Robinson*, unpublished opinion memorandum of the Court of Appeals, issued December 19, 1995 (Docket No. 170651). Defendant filed a delayed application for leave to appeal with the Michigan Supreme Court. In lieu of granting leave to appeal, the Supreme Court vacated this Court's prior decision and remanded the matter to this Court to address the merits of defendant's issues in light of the prosecutor's concession that defendant had entered a conditional guilty plea.[1] We affirm.

Defendant first challenges the stop and search of his motor vehicle by the police. He argues that the police officers stopped him only after they created the circumstances that necessitated a stop. We disagree. Defendant failed to show that the police stopped his vehicle on a mere pretext. The police had a valid reason for stopping defendant's vehicle due to the tinted windows on the car. Therefore, even if the police officers delayed in executing the stop, defendant has not shown that the stop was pretextual. *People v Haney*, 192 Mich App 207, 209-210; 480 NW2d 322 (1991). Furthermore, the search of defendant's car did not exceed the scope of a search permitted incident to an arrest. The police were entitled to search defendant's car even after he had been removed from the vehicle and placed into police custody. *People v Fernengel*, 216 Mich App 420, 423-424; 549 NW2d 361

(1996). The search was properly conducted contemporaneously with defendant's arrest. *People v Catanzarite*, 211 Mich App 573, 581-582; 536 NW2d 570 (1995). Compare *United States v Vasey*, 834 F2d 782, 787-788 (CA 9, 1987).

Defendant also argues that he was arrested based upon an invalid warrant and, therefore, the police did not have the authority to search his vehicle because the arrest was not lawful. *People v Houstina*, 216 Mich App 70, 75; 549 NW2d 11 (1996). Defendant contended that the matter underlying the arrest warrant was resolved well before his arrest and that the warrant erroneously remained on the computer system as an outstanding warrant. Factually, defendant failed to establish at the evidentiary hearing that the warrant was invalid at the time of his arrest. Accordingly, defendant failed to show that the search incident to his arrest was unlawful.

Affirmed.

/s/ Henry William Saad
/s/ Kathleen Jansen

I concur in the result only.

/s/ Janet T. Neff

[1] Because the Supreme Court ordered this Court to address defendant's "issues," we reject the prosecutor's argument that defendant's challenge to the validity of the outstanding warrant was not preserved for review by a conditional guilty plea.