

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHAWN MICHAEL MALONE,

Defendant-Appellant.

UNPUBLISHED

January 16, 1998

No. 195371

Cheboygan Circuit Court

LC No. 95-1405-FH

Before: Fitzgerald, P.J., and O'Connell and Whitbeck, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of possession of marijuana with intent to deliver, MCL 333.7401(2)(d)(iii); MSA 14.15(7401). He was sentenced to two to eight years' imprisonment. We affirm.

On November 19, 1995, Cheboygan County deputy sheriffs were dispatched to investigate a single vehicle accident in Cheboygan County. While waiting for a wrecker, the investigating officers observed defendant walking toward them on the road. According to the officers, defendant appeared to stagger or not have his balance. Defendant told them that he was the driver of the vehicle. Thinking that defendant was either injured or under the influence, the officers stopped defendant and asked him to wait in the patrol car. As defendant was entering the car, one of the officers observed a plastic bag in defendant's right hand. Upon examination of the contents of the bag, the officers concluded that it was marijuana. Defendant was then placed under arrest for possession of marijuana. In the search of defendant incident to his arrest, the officers found a marijuana pipe, rolling papers, a marijuana cigarette and four thousand, six hundred dollars in cash.

After the arrest, the officers continued the investigation concerning defendant's vehicle, which was then located in a ditch. When the wrecker arrived, the driver asked defendant for the car keys so that the vehicle could be extracted from the ditch; defendant gave the keys to the driver, who pulled the vehicle back on the roadway. In the course of doing a damage assessment of the vehicle, Officer Charles Beckwith noticed an odor of marijuana coming from the vehicle. Beckworth then observed a

large garbage bag behind the seat. He then felt the bag, picked it up, and opened it; the bag contained one pound, fifteen ounces of marijuana in two brick forms.

Defendant's first argument on appeal is that the trial court erred in denying defendant's motion to suppress all of the evidence found on defendant and in his vehicle. Defendant argues that he was arrested without probable cause when he was placed in the police car, and that the evidence subsequently obtained should be suppressed as the fruit of an illegal arrest. We review this issue under a clearly erroneous standard, *People v Burrell*, 417 Mich 439, 448; 339 NW2d 403 (1983), and affirm.

Both the Michigan and United States constitutions guarantee the right to be free from unreasonable searches and seizures. Const 1963, art 1, § 11; US Const, Am IV. A search conducted without a warrant is presumed to be unreasonable, subject to several specifically established exceptions. *Katz v United States*, 389 US 347, 357; 88 S Ct 507; 19 L Ed 2d 576 (1967). As the Supreme Court noted in *People v Champion*, 452 Mich 92, 98-99; 549 NW2d 849 (1996), police officers may make an investigatory stop, without a warrant, if they possess "reasonable suspicion" that crime is afoot. *Id.* (citing *Terry v Ohio*, 392 US 1; 20 L Ed 2d 889; 88 S Ct 1868 [1968]). An investigatory stop is constitutionally permitted if the suspicion is based on an objective observation that the individual has been, is, or is about to be engaged in criminal wrongdoing. *People v Peebles*, 216 Mich App 661, 664-665; 550 NW2d 589 (1996).

Our review of the record indicates that the trial court did not clearly err in finding that the search and subsequent seizure were lawful. First, defendant was stopped and asked to get into the police car so that the officers could ask him questions about the accident.¹ Defendant was not under arrest at this time; rather, he was asked to get into the vehicle to answer questions and he complied with that request. Regardless, even if the request constituted a detention in a constitutional sense, the detention was warranted in light of the fact that defendant had been in an accident and appeared to be intoxicated. Furthermore, as the trial court noted, defendant's arrest took place after "a baggie of marijuana was observed in his hand as he was entering the vehicle to comply with the police request." The "baggie of marijuana," held in open view, clearly gave the officers probable cause to arrest defendant and to search him subsequent to that arrest.

Defendant next contends that there was insufficient evidence to find beyond a reasonable doubt that defendant possessed marijuana with intent to deliver. Our review of the record indicates that the evidence, when viewed in the light most favorable to the prosecution, could convince a rational trier of fact that the essential elements of the crime were proven beyond a reasonable doubt. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). An intent to deliver may be inferred from the quantity of marijuana in a defendant's possession, the way in which the drugs are packaged, and from other circumstances surrounding the arrest. *People v Wolfe*, 440 Mich 508, 534; 489 NW2d 748 (1992).

In the present case, the unrefuted evidence demonstrates that defendant was in possession of one pound, fifteen ounces of marijuana in brick form, that the marijuana was located in a black garbage bag in defendant's car on a public highway, and that defendant had on his person forty-six hundred

dollars. At defendant's trial, a drug enforcement officer testified that the quantity of marijuana seized from defendant would make about 1800 normal marijuana cigarettes, and that based upon his experience that quantity indicated that defendant was a dealer. The trial court found that these facts together constitute circumstantial evidence of an intent to deliver. Since we conclude that the trial court's finding is supported by the evidence, we affirm.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Peter D. O'Connell

/s/ William C. Whitbeck

¹ The record indicates that defendant was asked to get into the patrol car so that the officers could continue their investigation out of the cold night air. The record also indicates that despite the cold, defendant was not wearing a coat.