

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES ALLEN GREER,

Defendant-Appellant.

UNPUBLISHED

March 9, 2006

No. 253612

Oakland Circuit Court

LC No. 03-188184-FH

Before: Cooper, P.J., and Jansen and Markey, JJ.

PER CURIAM.

After a jury trial in 2003, defendant was convicted of possession of between 50 and 225 grams of cocaine, MCL 333.7403(2)(a)(iii), and was sentenced to 10 to 20 years' imprisonment. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first contends that the trial court erred by denying his motion to suppress the evidence and quash the information. Defendant argues that no exigent circumstances existed to warrant entry by officers into the apartment where they arrested him. According to defendant, the arrest was illegal and the trial court should have suppressed all the evidence obtained incident to the illegal arrest. This Court reviews for clear error the trial court's findings of fact at a suppression hearing, and reviews de novo a trial court's ultimate determination regarding a motion to suppress. *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005).

The right against unreasonable searches and seizures is guaranteed by both the state and federal constitutions. US Const, Am IV; Const 1963, art 1, § 11. "The lawfulness of a search or seizure depends on its reasonableness." *People v Snider*, 239 Mich App 393, 406; 608 NW2d 502 (2000). "As a general rule, searches conducted without a warrant are per se unreasonable under the Fourth Amendment unless the police conduct falls under one of the established exceptions to the warrant requirement." *People v Beuschlein*, 245 Mich App 744, 749; 630 NW2d 921 (2001).

One recognized exception to the warrant requirement involves exigent circumstances, which exist when the police "possess probable cause to believe that a crime was recently committed on the premises, and probable cause to believe that the premises contain evidence or perpetrators of the suspected crime." *In re Forfeiture of \$176,598*, 443 Mich 261, 271; 505 NW2d 201 (1993). To invoke this exception, the police must "establish the existence of an

actual emergency on the basis of specific and objective facts indicating that immediate action is necessary to (1) prevent the imminent destruction of evidence, (2) protect the police officers or others, or (3) prevent the escape of a suspect.” *Id.*

In this case, the police received a telephone call alerting them to a possible breaking and entering “in progress” at a specific Clarkston apartment. The police were informed that the African-American residents had left the apartment, and that, after they left, noises were heard coming from the apartment suggesting that a breaking and entering was occurring. When the police arrived at the apartment, defendant, a white male, answered the front door. Although defendant claimed that he resided there, he failed to produce any proof to support that claim. His driver’s license listed an address in Pontiac, he did not have a key for the apartment, and he could not produce any other documentation to show that he lived there. Therefore, the officer who met defendant at the front door did not feel satisfied that defendant resided in the apartment.

In short, nothing that the police observed once they arrived at the apartment alleviated their concern that a breaking and entering had occurred and that defendant appeared to be the perpetrator. “In analyzing whether there is sufficient corroboration for an informant’s tip to constitute probable cause, . . . the relevant inquiry is not whether particular conduct is innocent or guilty, but the degree of suspicion that attaches to particular types of *noncriminal* acts.” *People v Levine*, 461 Mich 172, 180-181; 600 NW2d 622 (1999) (emphasis in original), citing *Illinois v Gates*, 462 US 213, 243-244 n 13; 103 S Ct 2317; 76 L Ed 2d 527 (1983). In this case, the evidence corroborating the anonymous tip sufficed to establish probable cause for the police to believe that a breaking and entering may have occurred. Because the police were justified in concluding that a breaking and entering might be in progress, they acted properly in conducting an immediate warrantless search of the apartment to prevent the imminent destruction of evidence or the escape of a suspect. *In re Forfeiture of \$176,598*, *supra* at 271. The police thus were lawfully in a position to observe, and to seize, the cocaine and drug paraphernalia that were in plain view in a bathroom. *People v Champion*, 452 Mich 92, 101; 549 NW2d 849 (1996).

We conclude that the trial court correctly denied defendant’s motion to suppress.

Defendant also argues that his counsel was ineffective for failing to object to admission of evidence of the uncharged crime of possession with intent to deliver, and to a police officer’s opinion testimony that the amount of cocaine found in the apartment was consistent with an intent to deliver rather than for mere personal use. Defendant further claims that the prosecutor was improperly allowed to question defendant about his prior conviction of possession of cocaine with intent to deliver.

To show “that a defendant’s right to effective assistance of counsel was so undermined that it justifies reversal of an otherwise valid conviction, a defendant must show that counsel’s performance fell below an objective standard of reasonableness, and that the representation so prejudiced the defendant as to deprive him of a fair trial.” *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). “A defendant must overcome a strong presumption that the assistance of his counsel was sound trial strategy, and he must show that, but for counsel’s error, the outcome of the trial would have been different.” *People v Sabin (On Second Remand)*, 242 Mich App 656, 659; 620 NW2d 19 (2000).

Defendant has failed to demonstrate ineffective assistance. Defendant was charged with, and convicted of, possession of cocaine between 50 and 225 grams. MCL 333.7403(2)(a)(iii). Defendant testified at trial that the cocaine was not his, that he never told the police that the cocaine belonged to him, and that he was not involved in trying to deliver the cocaine. Accordingly, the police officer's testimony that, in his opinion, the quantity of cocaine and the presence of a spoon and a lighter indicated that the cocaine was possessed with the intent to deliver it could not have adversely affected defendant because he was not charged with, or convicted of, that offense. Contrary to defendant's argument on appeal, the officer's testimony did not constitute impermissible "drug profile" evidence because the prosecutor did not attempt to use the testimony to suggest that certain innocuous aspects of the drugs or drug paraphernalia indicated that defendant must be a drug dealer. *People v Murray*, 234 Mich App 46, 52-58; 593 NW2d 690 (1999).

Regarding defendant's claim that his counsel was ineffective for permitting the prosecutor to present evidence of his prior conviction for possession with intent to deliver cocaine, we again find no ineffective assistance. Generally, evidence of a witness's prior convictions falls under MRE 609, but this rule "was not intended to apply where evidence of prior convictions is offered to rebut specific statements of the defendant who testifies at trial." *People v Taylor*, 422 Mich 407, 414; 373 NW2d 579 (1985). In this case, defendant testified that he had last used drugs "[p]robably about four years ago." The trial court properly permitted the prosecutor to attempt to impeach defendant's specific statement by posing the related inquiries whether defendant had admitted to using cocaine in November 2002, about a year before his instant trial, and whether defendant subsequently plead guilty of possessing cocaine with intent to deliver. *Id.* at 414-415. Moreover, defense counsel in fact did object to both the prosecutor's questions, and the trial court cautioned the jury that it could consider defendant's past criminal conduct solely for impeachment purposes. Because defendant's testimony that he used cocaine four years earlier "opened the door" to the prosecutor's impeachment, we conclude that defense counsel was not ineffective in this regard.

Affirmed.

/s/ Jessica R. Cooper
/s/ Kathleen Jansen
/s/ Jane E. Markey