STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MAURICE TRAYLOR,

Defendant-Appellant.

UNPUBLISHED
August 27, 2002

No. 232849
Wayne Circuit Court
LC No. 00-1478-01

Before: White, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of possession of 50 grams or more, but less than 225 grams of cocaine, MCL 333.7403(2)(a)(iii). The trial court sentenced him to ten to twenty years' imprisonment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that the trial court erred in denying defendant's motion to suppress evidence. Specifically, defendant contends that his arrest was unlawful because the police did not have probable cause to stop and arrest him and, consequently, the evidence seized incident to arrest should have been suppressed. We review de novo a trial court's ultimate decision with regard to a motion to suppress evidence; however, the trial court's findings of fact in deciding the motion are reviewed for clear error. *People v Parker*, 230 Mich App 337, 339; 584 NW2d 336 (1998). "A finding of fact is clearly erroneous if, after a review of the entire record, an appellate court is left with a definite and firm conviction that a mistake has been made." *Id.*

For an arrest to be lawful, an arresting officer must possess information demonstrating probable cause to believe that an offense has occurred and that the defendant committed it. *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996). "Probable cause to arrest exists where the facts and circumstances within an officer's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." *Id.*

Here, testimony revealed that during a drug house raid, police officers learned that the proprietor of the house was expecting a delivery of cocaine from a man driving either a green Ford Taurus or red Grand Am. Shortly thereafter, defendant approached the drug house in a red Grand Am. Defendant drove by the house three times and slowed down directly in front of the house on each instance. On the fourth pass by the house, a passenger accompanied defendant.

On this occasion, defendant's car stopped and the passenger made a cell phone call. An officer testified that a phone in the house was ringing at that same time. No one answered the phone and defendant drove away and stopped in front of a nearby apartment complex. When police approached the car and identified themselves, defendant attempted to close the door. After an officer opened the door, defendant again attempted to close the door. Thereafter, the officers forcibly removed him from the car, and patted him down for weapons. At that time, defendant was not free to leave. One officer found in defendant's pocket a bag containing what the officer suspected was cocaine. Having reviewed the record, we are not left with a definite and firm conviction that a mistake has been made.[1] On de novo review, we conclude that the trial court did not err in refusing to suppress the seized evidence because the facts and circumstances were sufficient to provide probable cause to arrest defendant.

Defendant next argues that the legislative guidelines specifically apply to convictions for possession of cocaine, and the court's refusal to impose a sentence accordingly amounted to an abuse of discretion. We disagree.

MCL 333.7403(2)(a)(iii) specifically mandates that a defendant convicted for possession of 50 grams or more, but less than 225 grams of a controlled substance "shall be imprisoned for not less than 10 years nor more than 20 years." However, the trial court may depart from the minimum term upon a finding of substantial and compelling reasons. MCL 333.7403(3). In reconciling statutory provisions of mandatory minimum terms of imprisonment and the statutory sentencing guidelines, this Court has determined that "only in cases where substantial and compelling reasons exist to warrant a departure may the court then consider the guidelines in determining the magnitude of the departure." *People v Izarraras-Placante*, 246 Mich App 490, 499; 633 NW2d 18 (2001). Here, the trial court found no substantial and compelling reasons to depart from the statutory minimum, and therefore did not abuse its discretion in sentencing defendant consistently with the statute. We decline defendant's invitation to revisit *Izarraras-Placante*, *supra*.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell

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[1] Contrary to defendant's assertion, Michigan case law supports a finding of probable cause even where the police do not have a physical description of the suspect. See *People v O'Neal*, 167 Mich App 274, 281; 421 NW2d 662 (1988); *People v Small*, 67 Mich App 580, 585; 242 NW2d 442 (1976).

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Before: White, P.J., and Hoekstra and O'Connell, JJ.

WHITE, P.J. (*concurring).*

The police had probable cause to stop and search defendant's vehicle; therefore, the circuit court did not err in denying defendant's motion to suppress. I agree that *People v Izarraras-Placante*, 246 Mich App 490; 633 NW2d 18 (2001), mandates affirmance.

/s/ Helene N. White