STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAY CHARLES KERSH,

Defendant-Appellant.

UNPUBLISHED
August 16, 1996

No. 174880
LC No. 93-009212

Before: Wahls, P.J., and Young and H.A. Beach,* JJ.

PER CURIAM.

Defendant was convicted of delivery of less than fifty grams of heroin, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv); possession with intent to deliver less than fifty grams of heroin, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv); possession with intent to deliver marijuana, MCL 333.7401(2)(c); MSA 14.15(7401)(2)(c); carrying a concealed weapon, MCL 750.227; MSA 28.424; and possession of a firearm during the commission of a felony, second offense, MCL 750.227b; MSA 28.424(2). Defendant appeals as of right. We affirm.

On August 9, 1993, police responded to complaints regarding narcotic activity at 12138 Washburn in Detroit. Undercover Detroit Police Officer Rommel Jamerson approached the house to attempt to purchase narcotics. Defendant approached Jamerson and handed Jamerson a white coin envelope in exchange for a marked ten dollar bill which was issued to Jamerson. Jamerson left the scene and called in a description of defendant to Sergeant Benjamin Lee, a member of the arrest crew. Sergeant Lee approached the house and detained one of the men who was playing dice on the porch. At that time, defendant came down the hallway in the house and started out through the front doorway. Recognizing that he fit the description, Sergeant Lee reached in the doorway, grabbed defendant's right hand and felt a weapon in defendant's pocket.

Following a search, the police confiscated a gun, eight coin envelopes of heroin, and two zip-lock bags of marijuana from defendant. Defendant moved to suppress this evidence on the basis that

* Circuit judge, sitting on the Court of Appeals by assignment.

the officers had no warrant or authority to enter the home and the entry was not executed under exigent circumstances. The trial judge found that it was a permissible social custom that any stranger walk on a porch and knock on the door and that Sergeant Lee properly reached six inches into the doorway because he had probable cause to arrest defendant. Accordingly, the trial judge denied defendant's motion to suppress.

Defendant first claims that Sergeant Lee's entrance into the home to arrest defendant was improper because he did not have a warrant and that exigent circumstances did not exist to justify the entry into the doorway. This Court will not disturb a trial court's ruling at a suppression hearing unless the ruling is clearly erroneous. *People v Bordeau*, 206 Mich App 89, 92; 520 NW2d 374 (1994).

The Fourth Amendment of the United States Constitution and art 1, § 11 of the Michigan Constitution of 1963 grants individuals the right to be secure from unreasonable searches and seizures. Here, the trial judge made a finding of fact that defendant was in the doorway but was six inches from the threshold when the officer grabbed him. In *United States v Santana*, 427 US 38; 96 S Ct 2406; 49 L Ed 2d 300 (1976), the Court addressed similar facts where a defendant was arrested when standing in the doorway. The Court determined that the porch and the open doorway to the home were public places and that a warrantless arrest based upon probable cause in this area did not violate the Fourth Amendment. *Id.*, 96 S Ct at 2409. Application of the Court's reasoning in *Santana* to this case dictates that defendant was in a public place when Sergeant Lee grabbed him. In addition, once defendant saw the police, there was a realistic expectation that any delay would result in destruction of evidence. *Id.* at 2410. Therefore, the confiscation of the gun and narcotics from defendant did not violate the Fourth Amendment.

Defendant next claims that there was insufficient evidence to convict him of felony-firearm, second offense. Specifically, defendant argues that the prosecution did not present any evidence to support the conclusion that this was defendant's second offense. We disagree. Viewing the evidence in a light most favorable to the prosecution, sufficient evidence was presented at trial for a rational trier of fact to find beyond a reasonable doubt the elements of felony-firearm, second offense. See *People v Stewart*, 441 Mich 89, 94-95; 490 NW2d 327 (1992); *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995). Accordingly, we need not address whether proof of a prior felony-firearm conviction must be shown at trial or at sentencing.

Finally, defendant claims that there was insufficient evidence to sustain a conviction of possession of marijuana with intent to deliver. We disagree. Defendant testified that he sold the marijuana to the men at the house and that any drugs he had on his person were for sale. The evidence presented adequately supported defendant's conviction of possession of marijuana with intent to deliver. *Hutner*, *supra*, p 282.

Affirmed.

/s/ Myron H. Wahls

/s/ Robert A. Young, Jr.
/s/ Harry A. Beach