STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 16, 2001
v	No. 222465 Kent Circuit Court
IDALBERTO RONDON, a/k/a BETICO RONDON, Defendant-Appellant.	LC No. 98-003022-FH

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

PER CURIAM.

Following a bench trial, defendant was convicted of possession with intent to deliver more than 650 grams of cocaine, MCL 333.7401(2)(a)(i); MSA 14.15(7401)(2)(a)(i), possession with intent to deliver more than 5 kilograms, but less than 45 kilograms of marijuana, MCL 333.7401(2)(d)(ii); MSA 14.15(7401)(2)(d)(ii), and maintaining a drug house, MCL 333.7405(1)(d); MSA 14.15(7405)(1)(d). He was sentenced to prison terms of life without parole for the cocaine conviction, nine to fourteen years[1] for the marijuana conviction, and thirty-two to forty-eight months[2] for the maintaining a drug house conviction. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court erred by denying his pretrial motion to suppress evidence. He contends that he was unlawfully stopped and that the police did not have probable cause to search his rented vehicle in which three pounds of marijuana were found. Defendant also claims that three kilograms of cocaine and approximately twenty-two pounds of marijuana that were found during a search of his residence pursuant to a search warrant are fruit of the poisonous tree. We disagree.

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[1] Defendant's maximum sentence was enhanced due to a prior drug conviction. MCL 333.7413(2); MSA 14.15(7413)(2). The information and judgment of sentence also refer to the habitual offender act, MCL 769.11; MSA 28.1083, but the trial court did not double-enhance defendant's sentence. *People v Fetterley*, 229 Mich App 511, 525; 583 NW2d 199, (1998).

[2] See note 1, *supra*.

A trial court's ruling on a motion to suppress evidence is reviewed with deference and will not to be disturbed unless clearly erroneous. *People v Faucett*, 442 Mich 153, 170; 499 NW2d 764 (1993). Clear error exists where the reviewing court is left with a definite and firm conviction that a mistake has been made. *People v Parke*r, 230 Mich App 337, 339; 584 NW2d 336 (1998). The trial court's application of constitutional standards to the facts, however, is not afforded the same deference, and the ultimate constitutional question is reviewed de novo. *People v Stevens (On Remand)*, 460 Mich 626, 631; 597 NW2d 53 (1999); *People v Rizzo*, 243 Mich App 151, 155; ___ NW2d ___ (2000).

The United States and Michigan Constitutions do not prohibit all search or seizures, only those searches or seizures that are unreasonable. *People v Shabaz*, 424 Mich 42, 52; 378 NW2d 451 (1985); *People v Snider*, 239 Mich App 393, 406; 608 NW2d 502 (2000). In general, a search conducted without a warrant is unreasonable unless there exists both probable cause and a circumstance establishing an exception to the warrant requirement. *People v Kazmierczak*, 461 Mich 411, 418; 605 NW2d 667 (2000); *Snider*, *supra* at 407.

Here, the police had sufficiently corroborated several anonymous tips through independent investigation to have a particularized suspicion to believe that defendant was engaged in or about to be engaged in illegal drug trafficking. This reasonable suspicion justified the stop of defendant's vehicle for investigatory purposes. *Terry v Ohio*, 392 US 1, 21; 88 S Ct 1868, 1879; 20 L Ed 2d 889 (1968); *People v Nelson*, 443 Mich 626; 505 NW2d 266 (1993). The information gathered from defendant during a consensual search of his person outside the vehicle revealed that defendant had a pager, a cell phone and over $1,400 in cash. While innocent in themselves, these items are known by police officers to be consistent with drug trafficking. This Court must consider with deference the reasonable inferences and deductions made by trained and experienced police officers. *People v Levine*, 461 Mich 172, 185; 600 NW2d 622 (1999); *Nelson*, *supra* at 636.

Under these circumstances, the police acted reasonably in using a drug dog to quickly confirm or dispel their suspicion. See, e.g., *United States v Place*, 462 US 696; 103 S Ct 2637; 77 L Ed 2d 110 (1983) (the Court held that a traveler's baggage could be detained under the principles of *Terry*, *supra*, on reasonable suspicion it contained drugs until a dog sniff could be performed). The twenty-five to thirty minute detention of defendant until a canine officer could be brought to the scene was not unreasonable. See, e.g., *People v Yeoman*, 218 Mich App 406, 413; 554 NW2d 577 (1996) (45-minute detention where police observed suspicious activity at a money changer and a suspect fled the scene; the police acted diligently to pursue their investigation to quickly confirm or dispel suspicion); *People v Chambers*, 195 Mich App 118; 489 NW2d 168 (1992) (20-minute detention reasonable to confirm or dispel suspicion equipment three suspects possessed was stolen).

However, the critical factor establishing probable cause in this case was not the dog "hit" on defendant's money, but the observation by the police of a suspicious Budweiser beer box in defendant's vehicle. That fact was not added to the information the police possessed based on a reasonable suspicion stop and frisk of the vehicle. *Michigan v Long*, 463 US 1032; 103 S Ct 3469; 77 L Ed 2d 1201 (1983). The officers did not testify, the prosecutor did not argue, and the

facts on this record do not support a *Terry* frisk of defendant's car for officer safety. *People v Champion*, 452 Mich 92, 99; 549 NW2d 849 (1996).

However, the trial court found the testimony of the police officers to be credible and that defendant was also lawfully stopped for the traffic violation of failing to signal a turn contrary to MCL 257.648; MSA 9.2348. The police may briefly detain a motorist to write a ticket where they have probable cause to believe a traffic violation has occurred; and the police may search a motor vehicle if probable cause is developed, even if their subjective intent in stopping the vehicle for the traffic violation was to gather evidence. MCL 257.742(1); MSA 9.2442(1); *Whren v United States*, 517 US 806, 812-813; 116 S Ct 1769; 135 L Ed 2d 89, 97-98 (1996); *Kazmierczak*, *supra* at 421 n 8; *People v Haney*, 192 Mich App 207, 210-211; 480 NW2d 322 (1991).

The stop for the civil infraction of failing to signal being lawful, the officer in this case could lawfully gather information on the vehicle. The Motor Vehicle Code requires a person driving or in control of a motor vehicle to display a vehicle's registration certificate upon demand of a police officer. MCL 257.223; MSA 9.1923. Furthermore, the Code provides that when the police witness a civil infraction they may stop and detain the person for "purposes of making a record of vehicle check" as well as writing a citation. MCL 257.742(1); MSA 9.2442(1).

Therefore, the officers were acting lawfully when they requested defendant to produce the vehicle's "rental papers." The officer also acted reasonably for safety reasons by staying close to defendant while he retrieved the vehicle's "paperwork." See *Michigan v Summers*, 452 US 692, 702; 69 L Ed 2d 340; 101 S Ct 2587 (1981), and *People v Martinez*, 187 Mich App 160, 166-168; 466 NW2d 380 (1991), remanded on other grounds 439 Mich 986 (1992). A search does not occur when an officer observes items in plain view from a lawful position. *Champion*, *supra* at 101. Although the plain view doctrine would not have justified the seizure of the Budweiser box, *id*. at 104, its observation, together with all of the other information the police had concerning defendant, provided probable cause to search the vehicle under the totality of the circumstances.

A long established exception to the warrant requirement is the automobile exception, which provides that where probable cause exists to believe an automobile contains contraband, the immediate search of the vehicle without a warrant is reasonable under the Federal and Michigan Constitutions. *United States v Ross*, 456 US 798, 807-808; 102 S Ct 2157, 2163-2164; 72 L Ed 2d 572 (1982); *People v Kazmierczak*, *supra* at 418-419. If probable cause exists, the automobile exception applies even after the vehicle has been impounded or is otherwise in police custody. *People v Romano*, 181 Mich App 204, 217; 448 NW2d 795 (1989). Therefore, the trial court properly denied defendant's motion to suppress.

Defendant's next argument, that the cash he possessed was illegally seized, must fail for the reasons discussed above. The trial court concluded that the police had particularized suspicion, under the totality of the circumstances, to believe that defendant was engaged in or about to be engaged in illegal drug trafficking. The trial court's determination is supported by the record and is not clearly erroneous. The conclusion that defendant was lawfully stopped and detained for a reasonable period of time forecloses the possibility that the police unreasonably interfered with defendant's property right to possess the cash found on his person. In other

words, defendant's property rights cannot exceed his liberty interest in being free from unreasonable detention.

Defendant also claims there were several falsehoods in and material omissions from the affidavit in support of search warrant issued for his residence. Defendant contends that when these falsehoods and omissions are considered, probable cause does not exist and the evidence seized as a result of the warrant must be suppressed.

Appellate review of the sufficiency of an affidavit in support of a search warrant is not de novo. *People v Whitfield*, 461 Mich 441, 445-446; 607 NW2d 61 (2000), quoting *People v Russo*, 439 Mich 584, 603-604; 487 NW2d 698 (1992). Instead, the reviewing court need only ask whether a reasonably cautious person could have concluded that there was substantial basis for finding probable cause. *Whitfield*, *supra* at 446. The magistrate's finding of probable cause must be given great deference and the affidavit must be read in a commonsense, realistic manner, to determine if there was a substantial basis for the magistrate's conclusion that there existed a fair probability that contraband or evidence of criminal activity would be found at the place searched. *Whitfield*, *supra*, at 446.

Where, as in the instant case, defendant alleges the affidavit contains false information, defendant must satisfy the burden of proof, by a preponderance of the evidence, that the affiant knowingly and intentionally, or with a reckless disregard for the truth, inserted false material into the affidavit and that the false material was necessary to the finding of probable cause. *Franks v Delaware*, 438 US 154, 155-156; 98 S Ct 2674; 57 L Ed 2d 667 (1978); *People v Williams*, 240 Mich App 316, 319-320; 614 NW2d 647 (2000). This standard also applies where it is alleged there were material omissions from the affidavit. *People v Stumpf*, 196 Mich App 218, 224; 492 NW2d 795 (1992). Omissions are not material if when the omitted information is included in the affidavit probable cause still exists. *People v Chandler*, 211 Mich App 604, 612-613; 536 NW2d 799 (1995).

Defendant made no showing below that any of the alleged falsehoods or omissions were knowingly and intentionally made, or made with a reckless disregard for the truth. Thus, defendant fails to meet his burden of proof on the first prong of the test established by *Franks*, *supra*. Also, reference to the cash found on defendant need not be excluded as the result of an illegal search for the reasons discussed above. *People v Cartwright*, 454 Mich 550, 558; 563 NW2d 208 (1997); *People v McKendrick*, 188 Mich App 128, 134; 468 NW2d 903 (1991). Finally, not one of the alleged falsehoods if deleted, or omissions if added, individually or collectively defeats the finding of probable cause; thus, defendant fails the second prong of materiality under *Franks*, *supra*. *People v Coy*, 243 Mich App 283, 314-315; __ NW2d __ (2000); *Williams*, *supra* at 320.

Lastly, defendant argues his detention in the police car was a de facto arrest not based on probable cause and therefore an illegal seizure under the Fourth Amendment. *Michigan v Summers*, 452 US 692, 700; 69 L Ed 2d 340; 101 S Ct 2587 (1981) (every seizure having the attributes of a formal arrest is unreasonable unless supported by probable cause.). Defendant relies on *United States v Richardson*, 949 F2d 851 (CA 6, 1991), and *People v Bloyd*, 96 Mich App 264; 292 NW2d 546 (1980). However, these cases are factually distinguishable from the present case.

The touchstone of all Fourth Amendment inquiries is reasonableness. *Shabaz, supra*, 52; *People v Shields*, 200 Mich App 554, 557; 504 NW2d 711 (1993). A brief stop and detention of an individual on less than probable cause is reasonable under the Fourth Amendment when the police, under the totality of the circumstances, have particularized suspicion, based on specific and articulable facts, that criminal activity may be afoot. *Terry, supra* at 392; *Shields, supra* at 557.

The line between a reasonable justified detention and an illegal arrest without probable cause is drawn on a case by case basis by examining the "character of the official intrusion and its justification." *Summers, supra* at 452 US 701 (1981); *Bloyd, supra* at 550. If the initial stop is justified, the reasonableness of the detention is measured by whether it is related in scope to the original justification for the stop and detention, and whether the police quickly and diligently pursue their investigation to confirm or dispel their suspicions. *Sharpe, supra* at 470 US 682, 686; *Chambers, supra* at 123.

In *United States v Richardson, supra,* while the court found it reasonable to approach and question the defendant, there are virtually no facts stated in the opinion before the stop to justify the DEA agent's "belief" that the defendant was engaged in drug trafficking, *id*., 949 F2d 857-858. Once the agents questioned the defendant, and did not develop further suspicion or probable cause, they could not lock him up while developing probable cause. *Id*., 949 F2d 858. Thus, *Richardson* stands for the unremarkable proposition that where there is little to justify the intrusion, the intrusion must be correspondingly limited, and ended where nothing is discovered, unless probable cause or further suspicion is developed. *Illinois v Wardlow*, 528 US 119; 120 S Ct 673, 676; 145 L Ed 2d 570, 577 (2000); *Rizzo, supra* at 157.

Similarly, in *Bloyd, supra* at 555, the police had reasonable suspicion to stop the defendant but could not expand the scope of the detention by keeping the defendant in custody while they searched for a crime to match their suspicions about him. The police action in *Bloyd, supra,* has been described by this Court as a "fishing expedition." *Chambers, supra* at 124.

In contrast, here the police had a plethora of specific and articulable facts, that criminal activity may have been afoot which justified a *Terry* stop. During the stop the police gained additional information through lawful means (consent search) that heightened their suspicion. Defendant was detained based on his own testimony no more than twenty-five to thirty minutes. The record supports the trial court's finding that the police diligently pursued their investigation and did not exceed the original justification for the stop. *Sharpe, supra* at 470 US 686; *Chambers, supra* at 123. The trial court did not clearly err by finding the stop and detention in this case was reasonable. *Yeoman, supra* at 413.

Defendant's detention in the police car was also reasonable under the facts and circumstances of this case. Unlike *Richardson,* defendant in the present case was already out of his vehicle. It would have been unreasonable to release defendant to his own automobile or to his house, where a weapon may have been obtained while the officers determined whether to escalate their investigation into a search of defendant's vehicle or abandon their effort short of probable cause. As noted in *Summers, supra* at 452 US 702, searching for drugs can be inherently dangerous: "Although no special danger to the police is suggested by the record, the

execution of a warrant to search for narcotics is a kind of transaction that may rise to sudden violence or frantic efforts to conceal or destroy evidence."

Furthermore, in this case the trial court found that the officers lawfully stopped defendant for a traffic violation. If in the course of the lawful traffic stop, the police develop probable cause to search defendant's rented vehicle, they may do so immediately without a search warrant. *Kazmierczak* at 421-422. The trial court viewed the dog sniff of defendant's money to be "frosting on the cake" and presumably not necessary for a determination of probable cause to search the vehicle. We agree. The police gained sufficient information solely through the traffic stop which included defendant possessing a large sum of cash, a pager, and a cell phone (consent search) and the presence of a suspicious box (plain view) in defendant's vehicle.

Therefore it would not be necessary to determine whether the length of defendant's detention was unreasonable because there was no causal link between the reasonable suspicion detention and the probable cause search of defendant's vehicle. The Supreme Court noted in *Sharpe, supra,* that it would be unnecessary to examine whether Sharpe had been unreasonably detained because his detention "bears no casual relation to Agent Cooke's discovery of the marijuana." The codefendant's twenty-minute detention was the focus of the case and determined reasonable. *Id.*

In summary, the trial court did not clearly err by finding the detention of defendant was based on reasonable suspicion which justified a *Terry* stop, was reasonable in length and did not exceed the original justification for the stop. Furthermore, the trial court properly found that probable cause to search defendant's vehicle was developed through a lawful traffic stop independent of the reasonable suspicion detention of defendant.

Affirmed.

/s/ Henry William Saad
/s/ E. Thomas Fitzgerald
/s/ Peter D. O'Connell