

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

V

VINCENT JONES,

Defendant-Appellee.

UNPUBLISHED

January 22, 2002

No. 233239

Wayne Circuit Court

LC No. 00-009701

Before: Hood, P.J., and Murphy and Markey, JJ.

PER CURIAM.

Defendant was charged with carrying a concealed weapon in a motor vehicle, MCL 750.227. After an evidentiary hearing, defendant's motion to suppress evidence was granted, and the charge against defendant was dismissed without prejudice. The prosecution now appeals by right the order dismissing the charge against defendant. We reverse.

The prosecution argues that the trial court clearly erred in suppressing the gun found after a search of defendant's truck where the truck was lawfully impounded and could have been searched incident to arrest. We agree that the trial court erred. A lower court's ruling on a motion to suppress is entitled to deference, and the court's factual findings are reviewed for clear error. *People v Faucett*, 442 Mich 153, 170; 499 NW2d 764 (1993); *People v Kaslowski*, 239 Mich App 320, 323; 608 NW2d 539 (2000). However, to the extent that a lower court's decision to suppress evidence is based on an interpretation of the law, appellate review is de novo. *Kaslowski, supra* at 323.

The United States and Michigan Constitutions guarantee the right to be free from unreasonable searches and seizures. *People v Champion*, 452 Mich 92, 97; 549 NW2d 849 (1996). Searches and seizures conducted without a warrant are unreasonable, except for established and well-delineated exceptions. *Id.* at 98. An arrest of a suspect based on probable cause is a reasonable seizure under the Fourth Amendment. *Id.* at 115. "Probable cause to arrest exists where the facts and circumstances within an officer's knowledge [at the moment of arrest] 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" and the suspect committed it. *Id.*

In this case, defendant challenged his warrantless arrest and the subsequent search of his vehicle at the police station, claiming that the arrest was without probable cause, thereby

rendering the subsequent search invalid. However, we find that defendant's arrest was conducted with probable cause, and therefore, the subsequent search of his truck was legal, as it falls within one of the delineated exceptions to the warrant requirement.

The first and foremost inquiry is into the propriety of defendant's arrest. The officers' testimony at the evidentiary hearing established that probable cause existed for defendant's arrest. The officers received information over their police radios from a sergeant at the 11th Precinct that defendant was wanted in connection with a felonious assault that had recently occurred within the last half hour. A description of defendant, his truck, and license plate was broadcast. The information also indicated that defendant was headed to or in the area of Softball City. This information provided probable cause to arrest defendant. Statutory authority establishes that positive information broadcast from a recognized police radio may afford the arresting officer "reasonable cause to believe . . . that a felony has been committed and reasonable cause to believe the person committed it." MCL 764.15(1)(f); see, also, *People v Coward*, 111 Mich App 55, 60-61; 315 NW2d 144 (1981). Having established that defendant's arrest was legal, we must next consider whether the subsequent search of defendant's vehicle satisfies any of the exceptions to the warrant rule.

This Court further finds that, although the search of defendant's truck at the police station cannot properly be said to be incident to defendant's arrest, the police had probable cause to take the truck to the police station to perform a search. *People v Thomas*, 33 Mich App 664, 668; 190 NW2d 250 (1971) (where search of the defendant's vehicle at the police station was upheld because, although not "incident" to the arrest, the probable cause factor still existed and the mobility of the car threatened the loss of evidence). Because the police had probable cause to arrest defendant, it goes without saying that an immediate search of defendant's truck at the scene of the arrest would have been permissible as a search incident to arrest. See *People v Eaton*, 241 Mich App 459, 463; 617 NW2d 363 (2000). However, the police also had probable cause to believe that defendant was unlawfully carrying a gun in his vehicle based on the information they received over the police radio indicating that defendant had pointed a silver handgun at the complainant while driving his vehicle on Seven Mile that evening. It is well established that the automobile exception to the warrant requirement permits warrantless searches or seizures of automobiles when there is probable cause to believe that evidence will be found in a lawfully stopped automobile or when an automobile is an instrumentality of a crime. *People v Anderson*, 166 Mich App 455, 478-479; 421 NW2d 200 (1988). This type of search is permitted even after the vehicle has been impounded. *People v Wade*, 157 Mich App 481, 486; 403 NW2d 578 (1987). Thus, because the police in this case had probable cause to believe defendant had a gun in his truck that may have been used in a felonious assault, the search of defendant's vehicle was proper. Furthermore, it was not unreasonable for the police to take defendant's truck to the police station to conduct the search where the probable cause factor still existed, and the mobility of the vehicle threatened loss of the evidence. *Thomas, supra* at 668. In addition, because defendant drove the truck during the commission of the crime, it appears to be an instrumentality of the crime itself, and therefore, was properly impounded and searched. As a result, the fact that the police set up surveillance on defendant's truck for three hours and then waited for him to get into it before arresting him is of no consequence. The police had probable cause to seize and search defendant's vehicle before his arrest. Accordingly, the trial

court clearly erred in granting defendant's motion to suppress and dismissing the case against defendant.

We reverse.

/s/ Harold Hood
/s/ William B. Murphy
/s/ Jane E. Markey