

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

KEITH WILLIAMS,

Defendant-Appellee.

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UNPUBLISHED

July 2, 2002

No. 236085

Wayne Circuit Court

LC No. 01-005501

Before: Kelly, P.J. and Murphy and Murray, JJ.

PER CURIAM.

Defendant was charged with carrying a concealed weapon, MCL 750.227, possession of a gas ejecting device, MCL 750.224(1)(e), possession of a firearm by a felon, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. Finding that the search warrant was defective, the trial court dismissed the charges. The prosecution appeals as of right. We reverse.

**I. Basic Facts and Procedural History**

The affiant,<sup>1</sup> a member of the Wayne County Sheriff's Department with training in narcotics identification and the customs and practices at "rave" parties,<sup>2</sup> went to a black building titled, "the Zoo," in the City of Detroit. Law enforcement officials had previously received complaints from the neighborhood about the activities going on at the building after hours. When the affiant approached the building, he detected a strong odor of marijuana coming from a car parked in front of the building that contained two people. The affiant and his partner were then greeted at the alley entrance of the building by a man who told them there was a \$20 admission, whereupon they were "patted down" before gaining entry. The man at the entrance then told the affiant and his partner that no pagers or cellular phones were allowed in the building. After taking their cellular phones back to their car, the affiant and his partner were allowed to enter. Upon entering the building, there was a strong odor of marijuana, very loud music, and many people were holding large balloons filled with nitrous oxide. The affiant and

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<sup>1</sup> The affiant's name is unknown and his signature on the affidavit is illegible.

<sup>2</sup> A rave party is a "culture party" where younger people get together to dance.

his partner observed, for approximately an hour, many people buying the balloons and inhaling the nitrous oxide.

One month later, the affiant gave a sworn affidavit based on the foregoing observations. The magistrate issued a warrant authorizing the search of the building and its curtilage. Four days thereafter, the police executed the search warrant after officers conducted a surveillance of the location and saw defendant “opening the shop” and greeting other workers as they arrived.

When the police executed the search warrant, defendant was in his vehicle, which obstructed the front door to the building as well as the entrance into the parking lot. Eventually, the defendant was pulled out of his car, placed on the ground and handcuffed. Thereafter, the police observed a canister of pepper spray and a knife in defendant’s vehicle and also discovered a pipe containing suspected marijuana residue. Additionally, in the back seat of defendant’s vehicle, the police discovered a gun belt with handcuffs hanging from it and in the trunk, the police discovered a black handgun case that was padlocked shut. Inside of the handgun case was a 9mm blue steel semi-automatic. Next to the firearm was a magazine containing ammunition. Defendant had an outstanding warrant from Wayne County and his driver’s license had been suspended since 1998. Defendant was arrested and his vehicle was impounded.

Before trial, defendant moved for an evidentiary hearing to suppress evidence on the grounds that the search warrant was improperly issued by the magistrate and improperly executed by the officers. Specifically, defendant argued that the information contained in the affidavit was stale because there was no indication of continuing activity. The prosecution responded by arguing that defendant did not have standing to move to suppress the evidence seized pursuant to the search warrant due to a lack of proprietary interest in the property. Moreover, the prosecution argued that the information was not stale because the affiant stated that the building would not be searched unless a rave party was taking place in the building. The trial court granted defendant’s motion to suppress based on the fact that the search warrant was defective resulting in a dismissal of all charges against defendant.

## II. Standard of Review

A trial court’s findings of fact following a suppression hearing will not be disturbed by an appellate court unless the findings are clearly erroneous. *People v Givans*, 227 Mich App 113, 119; 575 NW2d 84 (1997). Factual findings are considered clearly erroneous if, upon review of the record, there is a definite and firm conviction that a mistake was made. *Id.* The trial court’s conclusions of law are reviewed de novo. *People v Snider*, 239 Mich App 393, 406; 608 NW2d 502 (2000).

## III. Standing

The prosecution first argues that the trial court erred in determining that defendant had standing to move to suppress the evidence. We agree in part and disagree in part.

Prior to ascertaining whether a search was proper under both the United States and Michigan Constitutions, a defendant must have standing to challenge the search and bears the burden of establishing standing. *People v Powell*, 235 Mich App 557, 561; 599 NW2d 499 (1999). A defendant has standing to properly challenge a search if, when viewing the totality of

the circumstances, the defendant had “a reasonable expectation of privacy in the place that was searched.” *Id.* at 561. Various factors exist to determine whether a defendant has standing to challenge the search. These factors include:

ownership, possession and/or control of the area searched or item seized; historical use of the property or item; ability to regulate access; the totality of the circumstances surrounding the search; the existence or nonexistence of a subjective anticipation of privacy; and the objective reasonableness of the expectation of privacy considering the specific facts of the case. *Id.* at 563.

#### A. The Vehicle

We agree with the trial court that defendant had standing to challenge the search by moving to suppress the evidence found in the vehicle. Unreasonable searches and seizures are forbidden under the United States and Michigan Constitutions. US Const Am IV; Const 1963, art 1, § 11. “The test to determine whether a person has a protected privacy right under the Fourth Amendment or art. 1, § 11 is whether the defendant had an expectation of privacy in the object of the search and seizure and whether the expectation is one that society recognizes as reasonable.” *Id.* at 560. Here, defendant was in his vehicle, which was blocking the entrance of the building at the time the police executed the search warrant, so defendant had possession and control of the vehicle. Furthermore, a check on the vehicle confirmed that defendant was the owner. Generally, ownership and possession of a vehicle are adequate to establish an expectation of privacy, and thus, are sufficient to confer standing to challenge a search. See *People v Armendarez*, 188 Mich App 61, 71; 468 NW2d 893 (1991). When viewing the totality of the circumstances, we conclude that defendant had a reasonable expectation of privacy in his vehicle.

However, we find that the police legitimately searched defendant’s vehicle in accord with a valid search warrant. The warrant included the search of the curtilage because the affiant also observed illegal activity in front of the building where the rave party was held. Defendant’s car was blocking the entrance to the building on the evening that police executed the search warrant. An automobile found within the curtilage of property may be properly searched. *People v Jones*, 249 Mich App 131, 136; 640 NW2d 898 (2002). The rationale is that a vehicle is similar to other personal effects, such as a suitcase or a handbag, found on the described premises. *Id.* at 138-139. Every part of the vehicle that may support the object of the search may be searched, including a locked trunk. *Id.* at 138, quoting *United States v Ross*, 456 US 798; 102 S Ct 2157; 72 L Ed 2d 572 (1982).

Accordingly, we find that defendant had standing to challenge the search and we further find that the search was proper.

#### B. The Building

However, when viewing the totality of the circumstances, we cannot reasonably conclude that defendant had a reasonable expectation of privacy in the building to be searched. Defendant has not demonstrated that he had unencumbered access to the premises or that he owned the building where the rave parties were held. Further, the building has no known address. Defendant did not assert that he resided in the building or otherwise worked in the

building with any regularity or that he stored any personal effects in the building. Additionally, defendant has not claimed that he has a key to the building. Moreover, defendant has not claimed that he is leasing the building or paying utility bills. The only claim made by defendant on appeal is that he took money at the door to allow access. Merely asserting some control over an area or overseeing an operation in an area that is searched does not automatically confer standing. *United States v Padilla*, 508 US 77, 80-82; 113 S Ct 1936; 123 L Ed 2d 635 (1993). “[A] Fourth Amendment violation can be successfully urged only by those whose rights were violated by the search itself, not by those who are aggrieved solely by the introduction of damaging evidence.” *Id.* at 81-82.

Thus, when viewing the totality of the circumstances, defendant did not have standing to move to suppress the evidence because defendant had no reasonable expectation of privacy in the building.

### III. Stale Information

Finally, the prosecution argues that the trial court erred in determining that the search warrant was based upon stale information. We agree.

A magistrate may issue a search warrant only when it is supported by probable cause. MCL 780.651(1); *People v Ulman*, 244 Mich App 500, 509; 625 NW2d 429 (2001). Probable cause exists when a reasonable person, after viewing the facts and circumstances as a whole, would believe that evidence of a crime or contraband would be found in the location to be searched. *Ulman*, *supra* at 509. Staleness of a search warrant is one aspect in determining whether probable cause exists to search the place described because it cannot be assumed that evidence will remain there indefinitely. *People v Russo*, 439 Mich 584, 605; 487 NW2d 698 (1992).

Whether a search warrant is stale depends on the circumstances of each case:

Time as a factor in the determination of probable cause to search is weighed and balanced in light of other variables in the equation, such as whether the crime is a single instance or an ongoing pattern of protracted violations, whether the inherent nature of a scheme suggests that it is probably continuing, and the nature of the property sought, that is, whether it is likely to be promptly disposed of or retained by the person committing the offense. *Id.* at 605-606.

We find that the information contained in the search warrant was not stale. The officers had previously received complaints from the neighborhood about the activities going on at the building after hours. One month before the search warrant was executed, the affiant and his partner attended a rave party being held in the building and witnessed many illicit drug transactions. This party was being held at approximately 3:00 a.m. on a weekend. The magistrate issued a search warrant based on the affiant’s observations of illegal activities occurring at this rave party.

One month is not enough time to make the information stale in this specific case. Aside from the rave parties, the building otherwise appeared vacant. The affiant explained that these rave parties are usually publicized through underground sources and word of mouth. Further, the

affiant explained that these parties are usually held during early morning hours on weekends. Thus, due to the nature of these rave parties, it is very difficult to state with specificity exactly when one is scheduled. The affiant stated that he would only conduct a search of the building during a rave party, and thus, it was not unreasonable to execute the search warrant within four weekends. Further, given the complaints by the neighbors, and the fact that the affiant actually attended a rave party at the building previously, it appears that there was a pattern of criminal activity that was occurring. The trial court erred in finding the information stale.

Reversed.

/s/ Kirsten Frank Kelly  
/s/ William B. Murphy  
/s/ Christopher M. Murray