

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

CHARLES O'NEAL,

Defendant-Appellee.

UNPUBLISHED

June 8, 2004

No. 241705

Wayne Circuit Court

LC No. 01-008618

Before: Markey, P.J., and Wilder and Meter, JJ.

MEMORANDUM.

Plaintiff appeals by right the trial court's order granting defendant's motion to suppress and dismissing charges. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Police stopped defendant while driving because they saw a television on his dash, which is a civil infraction. In the course of the stop, one of the officers saw defendant place a dark object in the center console of the vehicle. Based on his experience, the officer correctly believed that defendant was concealing a weapon, and retrieved a blue steel automatic pistol from the console. The trial court granted defendant's motion to suppress, finding that defendant's furtive gesture was insufficient to establish probable cause to search.

The automobile exception to the warrant requirement allows searches or seizures of automobiles when there is probable cause to believe that evidence of a crime will be found in a lawfully stopped vehicle. *People v Levine*, 461 Mich 172, 179; 600 NW2d 622 (1999). The automobile exception is based on the mobility of vehicles in general and a reduced expectation of privacy in vehicles. *People v Carter*, 250 Mich App 510, 514-518; 655 NW2d 236 (2002).

The facts necessary to establish the exception are those that would establish probable cause to issue a warrant based upon the information known to the officers at the time of the search. *Levine*, *supra* at 179; *People v Garvin*, 235 Mich App 90, 101; 597 NW2d 194 (1999). Probable cause to search exists when the totality of facts and circumstances indicate a "substantial basis" for believing there is a "fair probability" the search will uncover contraband or evidence of a crime. *People v Kazmierczak*, 461 Mich 411, 417- 418; 605 NW2d 667 (2000); *Garvin*, *supra* at 102. In ascertaining the circumstances, an officer may make reasonable inferences based on his experience. *People v LoCicero (After Remand)*, 453 Mich 496, 501-501; 556 NW2d 998 (1996). Indeed, a reviewing court "must examine the officer's observations in

light of her experience and training, not in a vacuum or from a hypertechnical perspective.” *Levine, supra* at 178, citing 1 LaFave, *Search & Seizure* (2d ed), § 3.2(c), p 571.

The trial court clearly erred in granting the motion to suppress. The police validly stopped defendant’s vehicle based on a perceived civil infraction. One officer observed defendant attempting to hide an object in the center console. Based on his experience, the officer believed that defendant was concealing a weapon. In light of his experience and observations, there was a “substantial basis” for believing there existed a “fair probability” that the search would uncover a weapon. *Kazmierczak, supra*.

We reverse and remand for further proceedings. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Kurtis T. Wilder
/s/ Patrick M. Meter