STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 10, 2008
v	No. 275015 Wayne Circuit Court
MICHAEL WILLIAM MCCLENIC, Defendant-Appellant.	LC No. 06-009546-01

Before: Fitzgerald, P.J., and Markey and Smolenski, JJ.

PER CURIAM.

Defendant was found guilty by a jury of felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b, of which he received a sentence of 7 days-5years plus 2 years. He appeals by right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On August 4, 2006, defendant and several other persons were operating a barbeque stand. Randall Craig, a thirteen-year veteran police officer for the City of Detroit, was in a van along with other officers of a specialized gang enforcement unit when he saw defendant. When defendant looked towards the officers, he put his right hand inside his apron and grabbed a black object; his fist was pointed down towards his waistband. Defendant then placed his hands in his apron, turned away from the officers, and walked to a rear parking lot. Based on his experience, Officer Craig thought defendant could be armed. Officer Craig and his partner, Officer Lucy, followed defendant to a U-Haul truck that was parked in the back lot. Officer Craig observed defendant open the truck door, take the black object out of his apron, enter the truck, close the door, lean towards the passenger side of the vehicle, and then straighten up. Officer Craig ordered defendant out of the van and searched and detained him. Meanwhile, Officer Lucy searched the U-Haul and found a black handgun.

Before trial, defendant moved to suppress evidence of the gun at an evidentiary hearing. The trial court denied defendant's motion to suppress, finding that probable cause existed, in conjunction with the automobile exception, to lawfully search the U-Haul without a warrant.

Defendant claims on appeal that the trial court erred when it denied his motion to suppress the evidence of the handgun found in the U-Haul. We disagree.

When a defendant challenges the trial court's suppression ruling, we review for clear error the court's findings of fact. *People v Jenkins*, 472 Mich 26, 31; 691 NW2d 759 (2005). Clear error exists if some evidence supports the trial court's finding, but a review of the entire record leaves this Court with the definite and firm conviction that the trial court made a mistake. *People v Galloway*, 259 Mich App 634, 638; 675 NW2d 883 (2003). We review de novo legal questions, including whether the relevant facts support a finding of probable cause to warrant a valid constitutional search or seizure, and whether to apply the exclusionary rule. *Jenkins*, *supra*. Under do novo review, this Court will not defer to the trial court's legal conclusions. *Id*.

Constitutional rights are personal and may only be asserted by one whose rights are infringed. *Rakas v Illinois*, 439 US 128, 133-134; 99 S Ct 421; 58 L Ed 2d 387 (1978); *People v Smith*, 420 Mich 1, 17; 360 NW2d 841 (1984). The person asserting the right to be free from an unreasonable search must prove that the constitutional protection applies. *People v Nash*, 418 Mich 196, 204; 341 NW2d 439 (1983). The protection applies and the defendant has standing to challenge a search when, in light of the totality of the circumstances, he has a reasonable expectation of privacy that society is prepared to recognize as reasonable in the place searched. *Rakas*, *supra* at 143; *People v Armendarez*, 188 Mich App 61, 70-71; 468 NW2d 893 (1991). It is settled law that a defendant does not have standing to challenge the search of a vehicle if he does not assert either a proprietary or possessory interest in it nor has any legitimate expectation of privacy in it. *Armendarez*, *supra* at 71; see also *Rakas*, *supra* at 148.

In this case, defendant's business associate rented the U-Haul truck and permitted defendant to use it. Defendant was not a party to the rental agreement for the vehicle. Because defendant was not a party to the rental agreement, he was not an authorized user of the vehicle. Defendant did not have a proprietary or possessory interest in the U-Haul truck. In light of the totality of the circumstances, defendant did not have a reasonable expectation of privacy in the U-Haul truck; therefore, he lacks standing to contest the search of the vehicle.

Even if defendant did have standing, the search was lawful under the automobile exception to the warrant requirement.

The right against unreasonable searches and seizures is guaranteed by both the state and federal constitutions. US Const, Am IV; Const 1963, art 1, § 11. The federal and state constitutions do not forbid all searches and seizures, only unreasonable ones. *People v Brzezinski*, 243 Mich App 431, 433; 622 NW2d 528 (2000). Generally, a search conducted without a warrant is unreasonable unless there exists both probable cause and a circumstance establishing an exception to the warrant requirement. *Id.*

Under the automobile exception, if a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment permits police to search the vehicle without a warrant. *Maryland v Dyson*, 527 US 465, 466-467; 119 S Ct 2013; 144 L Ed 2d 442 (1999); *People v Garvin*, 235 Mich App 90, 101; 597 NW2d 194 (1999).

Probable cause to search an automobile exists when, in light of the totality of the circumstances, the facts and circumstances known to the officers at the time of the search would warrant a person of reasonable prudence to believe that evidence of a crime or contraband sought is in a stated place. *Brzezinski*, *supra* at 433; *Garvin*, *supra* at 102. A police officer's testimony with respect to a finding of probable cause to conduct a search must be examined by the court in

light of the officer's experience and training, not in a vacuum or from a hypertechnical perspective. *People v Levine*, 461 Mich 172, 185; 600 NW2d 622 (1999).

The facts and circumstances in light of the totality of the circumstances known by Officer Craig at the time of the search revealed the following: 1) Officer Craig observed defendant in an area beset by frequent robberies; 2) Officer Craig observed defendant place his hand on a black object in the same manner that one would grip a gun; 3) Officer Craig relied upon his thirteen years of experience as a police officer and his current assignment in gang enforcement that defendant's grip on the object was similar to the manner in which one would grip a gun; 4) after noticing the officers observing him, defendant walked away from the officers to a back lot where a U-Haul truck was parked; 5) Officer Craig saw defendant get in the U-Haul, take the black object out of his apron, lean down towards the passenger seat, and then straighten up. The totality of these circumstances would warrant a person of reasonable prudence to believe that the search of the U-Haul would uncover evidence of the commission of the crime of carrying a concealed weapon. *Brzezinski, supra* at 433. Therefore, pursuant to the automobile exception and the existence of probable cause, Officer Craig's search of the vehicle was proper. Accordingly, the trial court did not err when it denied defendant's motion to suppress.

We affirm.

/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey
/s/ Michael R. Smolenski