

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

KIRK JOHNSON,

Defendant-Appellee.

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UNPUBLISHED

October 28, 2008

No. 279959

Wayne Circuit Court

LC No. 06-012843

Before: O’Connell, P.J., and Smolenski and Gleicher, JJ.

PER CURIAM.

The prosecutor charged defendant with two counts of possession of less than 25 grams of a controlled substance, MCL 333.7403(2)(a)(v), and utilizing a motor vehicle in the commission of a felony, MCL 257.319(2)(d). After defendant waived a preliminary examination, he moved in the circuit court to suppress evidence that the police had obtained in the course of a traffic stop and resultant arrest. The circuit court held an evidentiary hearing, and ultimately granted defendant’s motion to suppress and dismissed the charges against him. The prosecutor appeals as of right. We reverse and remand, and decide this appeal without oral argument pursuant to MCR 7.214(E).

The prosecutor argues that the circuit court erred by suppressing the evidence on the basis that the police officers did not have probable cause to search defendant’s van. We review for clear error a circuit court’s findings of fact at a suppression hearing, “but its ultimate decision on a motion to suppress is reviewed de novo.” *People v Dunbar*, 264 Mich App 240, 243; 690 NW2d 476 (2004).

To establish that law enforcement officers conducted a search or seizure in compliance with the Fourth Amendment, or under the Michigan Constitution, the officers “must show either that they had a warrant or that their conduct fell within one of the narrow, specific exceptions to the warrant requirement.” *People v Kazmierczak*, 461 Mich 411, 418; 605 NW2d 667 (2000). “One of the well-established exceptions to the warrant requirement is known as the automobile or motor vehicle exception,” which “is premised on an automobile’s ready mobility and pervasive regulation.” *Id.* “[U]nder the automobile exception, the police may search a motor vehicle without the necessity of first obtaining a warrant if probable cause to support the search exists.” *Id.* at 418-419.

A finding of probable cause requires a substantial basis for concluding that a search would uncover evidence of wrongdoing. *People v Garvin*, 235 Mich App 90, 102; 597 NW2d 194 (1999). “There must be a fair probability that contraband or evidence of a crime will be found in a particular place. The determination whether probable cause exists to support a search, including a search of an automobile without a warrant, should be made in a commonsense manner in light of the totality of the circumstances.” *Id.* A reviewing court “must examine [an] officer’s observations in light of her experience and training, not in a vacuum or from a hypertechnical perspective.” *People v Levine*, 461 Mich 172, 185; 600 NW2d 622 (1999).

Our review of the totality of the circumstances in this case, as understood and interpreted by the involved police officers, reveals that the officers possessed probable cause to believe that defendant had committed a felony and that his vehicle contained contraband. The circuit court heard testimony from two officers who had substantial experience and training in the field of narcotics enforcement. The officers agreed that in their experience, the intersection of Joy and Trinity in Detroit constituted a popular focus of narcotic-related activity. Dearborn police department Corporal Mark Myers recounted that shortly after midnight on September 6, 2006, he saw defendant approach a gas station pay phone frequently involved in drug transactions. Myers observed from a distance of about 35 or 40 feet that defendant remained at the phone for two to three minutes, during which time he “made numerous dialing attempts,” although Myers did not know whether defendant successfully contacted anyone. According to Myers, a brown Chevrolet pulled into the gas station parking lot, prompting defendant to drop the phone and approach the brown car for 20 seconds. Myers described that “the subject in the [brown] vehicle reach[ed] out and hand[ed]” defendant “something,” and that defendant immediately entered his van and drove away from the gas station, with the brown Chevrolet following behind. Myers, who remained in communication with several other officers, watched the two vehicles turn onto a side street, then requested assistance in tracking the vehicles.

Corporal Corey Smith testified that in response to Myers’s request, he drove his unmarked car toward Myers’s location, and spotted defendant’s black van driving northbound on Pierson in Detroit, trailed by the brown Chevrolet.<sup>1</sup> Smith watched from between five and six houses away on the lighted street as defendant’s black van and the brown car stopped side-by-side, within three feet of each other, at which time Smith “observed what [he] thought to be a hand-to-hand narcotics transaction” involving defendant and a passenger in the brown Chevrolet. Smith explained further that defendant “reach[ed] his hand out to the passenger-side of the Chevy, and both of them exchanged small items.” Defendant’s van and the brown Chevrolet then departed, driving in different directions. After Smith relayed his observations to Myers, Myers requested that a marked police vehicle stop defendant’s van, which stop ultimately occurred in Dearborn Heights.

Myers and Smith both testified that the repeated use of pay phones, meetings in more secluded areas, and exchanges of small items through closely proximate vehicle windows, all

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<sup>1</sup> Smith testified that the narcotics enforcement team had seen the same brown Chevrolet two or three evenings before September 6, 2006; Smith expressed his awareness “that there was some concern that this brown Chevy might be involved in drug trafficking.”

constituted common characteristics of narcotic transactions. Myers and Smith believed that defendant had engaged in narcotic transactions because he exhibited similar conduct in an area they knew as hosting frequent drug activity, with the brown Chevrolet that they suspected of involvement in drug transactions. *In re Forfeiture of \$180,975*, 478 Mich 444, 467; 734 NW2d 489 (2007) (“The reputation of an area for criminal activity may be relied on to support an inference of criminal conduct.”) (internal quotation omitted). We conclude that the several observations made by the officers concerning defendant’s conduct early on September 6, 2006, in combination with the inferences they drew in light of their narcotic enforcement experience, amply established probable cause to stop and search defendant’s black van, or “a fair probability that contraband or evidence of a crime w[ould] be found in defendant’s van. *Garvin*, *supra* at 102.”<sup>2</sup> Consequently, the circuit court erred in granting defendant’s motion to suppress.

Defendant maintains that the police officers deprived him of due process by executing a traffic stop outside of their jurisdiction. Because defendant did not file a cross appeal, however, he is limited to the issues raised by the prosecutor-appellant. *People v Gallego*, 199 Mich App 566, 575; 502 NW2d 358 (1993), citing MCR 7.207. We thus decline to address the issue.

We reverse the order suppressing the evidence and dismissing the case without prejudice, and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Peter D. O’Connell  
/s/ Michael R. Smolenski  
/s/ Elizabeth L. Gleicher

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<sup>2</sup> Myers additionally witnessed defendant and a passenger attempt to conceal objects under their seats or in their clothing when a fully marked police car stopped directly behind their vehicle. Evasive behavior may be a relevant factor in a finding of probable cause, *People v Lewis*, 251 Mich App 58, 70; 649 NW2d 792 (2002), as may attempts to hide objects within a vehicle. *People v Armendarez*, 188 Mich App 61, 72; 468 NW2d 893 (1991). Although Myers’s direction to perform the traffic stop preceded defendant’s evasive conduct, the record reflects that the marked vehicle did not activate its lights to initiate the traffic stop until after the evasive conduct had occurred. Accordingly, defendant’s attempt at concealment qualifies as a part of the totality of the circumstances that should be considered in evaluating the reasonableness of the stop and search.