

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DAVID ANTHONY HOWARD,

Defendant-Appellee.

UNPUBLISHED

August 10, 2010

No. 295018

Wayne Circuit Court

LC No. 09-012701

Before: MURPHY, C.J., and K.F. KELLY and STEPHENS, JJ.

PER CURIAM.

The prosecution appeals by leave granted a trial court order granting defendant's motion to suppress evidence found in defendant's vehicle. We reverse and remand for further proceedings.

The prosecution argues that the trial court erred by suppressing the gun found in the glove compartment of defendant's vehicle following his arrest for operating a vehicle while intoxicated (OWI), MCL 257.625(1). The prosecution makes several arguments for reversal including the court's application of the holding in *Arizona v Gant*, ___ US ___; 129 S Ct 1710; 173 L Ed 2d 485 (2009), the good faith exception to the exclusionary rule and the inevitable discovery of the weapon during an inventory search. We will not address those arguments, however, because the issue of the application of the automobile exception to the requirement of search warrant is outcome determinative. "We review de novo whether the Fourth Amendment was violated and whether an exclusionary rule applies." *People v Hyde*, 285 Mich App 428, 438; 775 NW2d 833 (2009).

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. Generally, a search or seizure conducted without a warrant is unreasonable unless there exists a circumstance establishing an exception to the warrant requirement, *People v Tierney*, 266 Mich App 687, 704; 703 NW2d 204 (2005), and if evidence is unconstitutionally seized, it must be excluded from trial, *People v Brown*, 279 Mich App 116, 127; 755 NW2d 664 (2008). "Exclusion of improperly obtained evidence serves as a deterrent to police misconduct, protects the right to privacy, and preserves judicial integrity." *Id.*

The prosecution argues that although the officers did not have a warrant, because the officers had probable cause to believe that defendant's vehicle contained a gun, their search was valid under the automobile exception to the warrant requirement. We agree.

A well-established exception to requiring a warrant for a search of a vehicle is the "automobile" exception. *People v Kazmierczak*, 461 Mich 411, 418; 605 NW2d 667 (2000). As long as the police have probable cause of finding evidence, a warrantless search of a readily mobile automobile is permitted. *Id.* at 418-419. The automobile exception permits a vehicle to be searched without a warrant, even in non-exigent circumstances, so long as the vehicle is mobile and law enforcement officers have probable cause to believe that it contains incriminating evidence. *Maryland v Dyson*, 527 US 465, 466; 119 S Ct 2013; 144 L Ed 2d 442 (1999). Further, as recognized in *Gant*, "[i]f there is probable cause to believe a vehicle contains evidence of criminal activity, *United States v Ross*, 456 US 798, 820-821; 102 S Ct 2157; 72 L Ed 2d 572 (1982), authorizes a search of any area of the vehicle in which the evidence might be found." *Gant*, 129 S Ct at 1721. The Court also observed that "*Ross* allows searches for evidence relevant to offenses other than the offense of arrest, and the scope of the search authorized is broader." *Id.*

Probable cause to search "exists when the facts and circumstances known to the police officers at the time of the search would lead a reasonably prudent person to believe that a crime has been or is being committed and that evidence will be found in a particular place." *People v Beuschlein*, 245 Mich App 744, 750; 630 NW2d 921 (2001). If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search, including all containers within a car. *Wyoming v Houghton*, 526 US 295, 301; 119 S Ct 1297; 143 L Ed 2d 408 (1999).

The trial court found that there was no testimony during the evidentiary hearing that indicated either officer had probable cause to believe defendant's vehicle contained evidence relevant to offenses other than the OWI offense. Officer Matthew Greb followed defendant from the bar parking lot and pulled him over for a traffic infraction. During the traffic stop, Officer Matthew Lamita, who assisted Greb with the stop, looked through the passenger side window and observed an empty gun holster on the passenger seat and a single bullet in center console of the vehicle. Defendant told Greb that he did not have a gun and that he did not have a concealed weapons permit. Also, when Greb patted down defendant, he did not find a gun on defendant's person.

Based on the evidence of the empty holster on the passenger seat and the bullet in the center console, in addition to a gun not being found on defendant's person and defendant's statements that he did not have a concealed weapons permit, it was reasonable for the officers to believe that defendant was illegally carrying a concealed weapon in a motor vehicle. Thus, the trial court clearly erred in finding otherwise and Lamita's search was a proper search under the automobile exception because there was probable cause to believe defendant's vehicle contained evidence of criminal activity relevant to an offense other than the offense of arrest.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ Kirsten Frank Kelly

/s/ Cynthia Diane Stephens