STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PATRICK ERNEST RUSSELL,

Defendant-Appellant.

UNPUBLISHED
September 11, 1998

No. 198518
Saginaw Circuit Court
LC No. 95-010844 FH

Before: Mackenzie, P. J., and Whitbeck and G. S. Allen, Jr.*, JJ.

PER CURIAM.

A jury convicted defendant of conspiracy to obtain money by false pretenses, MCL 750.157a; MSA 28.354(1), and nine counts of obtaining money by false pretenses over $100, MCL 750.218; MSA 28.415. The trial court sentenced defendant to five to fifteen years in prison for each conviction. He appeals as of right, and we affirm.

I. Facts

Defendant is charged for his participation with another man[1] in a twenty-four-hour shopping escapade at various Saginaw businesses using false identification and writing checks on two accounts, each without sufficient funds. The aliases of defendant and the other man were, respectively, "Jack Blake" and "William Pace" ("Pace"). "Pace" wrote the checks. Defendant was present at ten such transactions. Defendant conferred with sales agents at the businesses, discussing the items to be purchased and conferred with "Pace." At one of the businesses, "Pace" wrote a bad check for an item, worth less than $100, that defendant had selected. Further, defendant drove the van used to transport, over multiple trips, each of ten items valued above $100 to a mini-storage facility.

Later, when salespeople became suspicious of "Pace" because of his inconsistent buying habits and the speed with which "Pace" and defendant made their purchases and also because of the mysterious address "Pace" had provided on the checks, they informed the police of the description of defendant's van and its license plate number. A police officer driving a marked police vehicle

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

discovered the van soon afterward and noted that all the occupants of the van were looking at him. The officer further observed momentary stops the van made and followed the van into a parking lot where defendant-driver made several evasive maneuvers to avoid the officer and another marked police vehicle. The officer made an investigative stop in which he interviewed defendant and "Pace." Defendant claimed he had only known "Pace" for one year, while "Pace" claimed that he had known defendant forever. Meanwhile the officer had noted that the van's interior was strewn with a wide variety of unrelated items. Furthermore, given that the interior of the van was carpeted, the officer concluded that the van was not designed to accommodate cargo and took defendant into custody.

Police later determined that the two men were cousins. They found, while executing a search warrant, documents linking the two men over an extended period as well as another document bearing defendant's alias with yet another false address.

II. Sufficient Evidence

Defendant argues that there was insufficient evidence to support his convictions for conspiracy to obtain money by false pretenses and obtaining money by false pretenses over $100.

In reviewing the sufficiency of the evidence, this Court "must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

Here, the evidence was sufficient to establish a conviction for conspiracy. MCL 750.157a; MSA 28.354(1) provides:

> Any person who conspires together with 1 or more persons to commit an offense prohibited by law, or to commit a legal act in an illegal manner is guilty of the crime of conspiracy.

The Court stated in *People v Justice (After Remand)*, 454 Mich 334, 347; 562 NW2d 652 (1997), that "direct proof of the conspiracy is not essential; instead, proof may be derived from the circumstances, acts, and conduct of the parties." The Court explained that a conspiracy requires that "two or more individuals must have voluntarily agreed to effectuate the commission of a criminal offense." *Id*. at 345. There must be proof of a specific intent to combine shared by two or more people, including proof of knowledge of that intent, and "proof demonstrating that the parties specifically intended to further, promote, advance, or pursue an unlawful objective." *Id*. at 346-347. "Intent may be inferred from all the facts and circumstances," *People v Wolford*, 189 Mich App 478, 480; 473 NW2d 767 (1991), and because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence of intent is sufficient, *People v Bowers*, 136 Mich App 284, 297; 356 NW2d 618 (1984).

Circumstantial evidence showed that defendant and "Pace" had the intent to combine. A few months before they went to purchase items by writing checks without sufficient funds, "Pace" provided

defendant with false documents, including a false birth certificate and a false social security card, to procure a driver's license for defendant in the name of "Jack Blake." Not only did defendant accompany "Pace" to look at merchandise, but defendant was present when purchases were made and when merchandise was being loaded. When stopped, defendant provided the police with false information and identification regarding his own identity and false information regarding the identity of "Pace." When the police executed a search warrant at the residence of "Pace's" brother, where "Pace" also stayed regularly, they found a document that was similar to a document that was found in defendant's wallet with the false name of Jack Blake and a false address in Toledo, Ohio. Moreover, the police found telephone bills with defendant's name on them. From the circumstances, and because minimal circumstantial evidence is sufficient to establish intent, *Bowers*, *supra*, at 297, a reasonable person could conclude that defendant and "Pace" had both the intent to combine and to commit an offense.

We also find sufficient evidence to support defendant's conviction of false pretenses with the intent to defraud, MCL 750.218; MSA 28.415.

> There are four elements to the crime of false pretenses: (1) a false representation concerning an existing fact, (2) knowledge by the defendant of the falsity of the representation, (3) use of the representation with intent to deceive, and (4) detrimental reliance on the false representation by the victim. [*People v Reigle*, 223 Mich App 34, 37-38; 566 NW2d 21 (1997).]

The jury convicted defendant under an aiding and abetting theory, which requires proof of the following:

> (1) the charged crime was either committed by the defendant or some other person, (2) the defendant gave encouragement or performed acts that aided and assisted the commission of the crime, and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time of giving aid and encouragement. [*People v Partridge*, 211 Mich App 239, 240; 535 NW2d 251 (1995).]

In *People v Wilson*, 196 Mich App 604, 614; 493 NW2d 471 (1992), the Court stated:

> To establish aiding and abetting … the prosecution must show that the underlying crime was committed by someone, and that the defendant either committed or aided and abetted the commission of that crime. [*People v Genoa*, 188 Mich App 461, 464; 470 NW2d 447 (1991).] Mere presence, even with knowledge that an offense is about to be committed or is being committed, is insufficient to show that a person is an aider and abettor. *People v Rockwell*, 188 Mich App 405, 412; 470 NW2d 673 (1991). The phrase "aiding and abetting" describes all forms of assistance rendered to the perpetrator of a crime. *Id*. at 411. It includes all words or deeds that may support, encourage, or incite the commission of a crime. *People v Palmer*, 392 Mich 370; 220 NW2d 393 (1974). To be convicted of aiding and abetting, a person must either have possessed the required intent or have participated while knowing that

the principal had the requisite intent. *Rockwell, supra*. Such intent may be inferred from circumstantial evidence.

Here, the evidence shows that "Pace" intentionally, under a false name and by presenting checks without sufficient funds in the account, obtained merchandise at different stores with a value of more than $100. "Pace's" knowledge of the falsity of the representation and the use of the misrepresentation with the intent to defraud can be inferred from the entire evidence. *Reigle, supra* at 39. "Pace" had opened a personal and a business account at First of America Bank, using false names, toward the end of April, 1995. When he wrote the checks for the purchases about three weeks later on May 19 and 20, 1995, one may reasonably infer that he must have been aware that he did not have sufficient funds in the accounts, but went from one shop to another acquiring goods. The evidence was sufficient to support an inference that "Pace" knew of the falsity of his representation to shop assistants, and that he wrote the false checks with intent to defraud. The final element of false pretenses is detrimental reliance on the false representation by the victim. In the present case, the evidence was sufficient to establish that the salespeople relied on "Pace's" misrepresentations.

In addition to presenting sufficient evidence to show that "Pace" committed the underlying crime, the prosecution had to show that defendant either committed or aided and abetted the commission of that crime. *Wilson, supra* at 614. In the present case, the evidence established that defendant accompanied "Pace" to all of the specific locations where purchases were made with checks and identification bearing the false name, "Pace," and was often standing next to him as he provided false identification to make the purchases of over $100. There was evidence that defendant and "Pace" discussed certain purchases, and that both made inquiries of salespeople. Defendant also picked out some merchandise, allegedly at the request of "Pace." In addition, defendant was the driver of the van transporting the merchandise. The evidence was sufficient to infer that defendant was not merely present at the purchases, but rendered assistance with words and deeds, and participated while knowing that "Pace" had the requisite intent. *Wilson, supra* at 614. A rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *Wolfe, supra,* at 515.

III. Reasonable Search and Seizure

Defendant argues that the trial court abused its discretion in refusing to suppress the evidence obtained as a result of the stop and seizure of the van defendant was driving, maintaining that it violated his federal and state constitutional rights to be free from unreasonable searches and seizures.

Generally, the determination of reasonable suspicion or probable cause to support a warrantless stop and/or search and seizure under the federal constitution is reviewed de novo on appeal. *Ornelas v United States*, 517 US 690; 116 S Ct 1657, 1659; 134 L Ed 2d 911 (1996). However, findings of facts are reviewed for clear error, with due weight being given to factual inferences drawn by a trial court and by local law enforcement officers. *People v Taylor*, 454 Mich 580, 595; 564 NW2d 24 (1997). "A decision is clearly erroneous if, although there is evidence to support it, the Court is left with a definite and firm conviction that a mistake has been made." *People v Chambers*, 195 Mich App 118, 121; 489 NW2d 168 (1992).

Both the United States and the Michigan Constitutions guarantee the right against unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11; *In re Forfeiture of $176,598*, 443 Mich 261, 264-265; 505 NW2d 201 (1993). The lawfulness of a search or seizure depends upon its reasonableness. *People v Armendarez*, 188 Mich App 61, 66; 468 NW2d 893 (1991). A search conducted without a warrant is unreasonable unless there exist both probable cause and a circumstance establishing an exception to the warrant requirement. See *In re Forfeiture of $176,598*, supra at 265-266.

In *People v Williams*, 160 Mich App 656, 660; 408 NW2d 415 (1987), this Court states that:

> [P]robable cause to *search* exists where facts and circumstances would warrant a person of reasonable prudence to believe that a crime has been or is being committed and that the evidence sought will be found in the stated place. In assessing whether probable cause exists, the facts, circumstances and information known to the officers at the time of the search must be examined. [Emphasis in the original].

The recognized exceptions to the warrant requirement include investigative stops of vehicles. In *People v Whalen*, 390 Mich 672, 682; 213 NW2d 116 (1973), the following rules were adopted by the Court with regard to the stopping and searching of motor vehicles and their contents:

> 1. Reasonableness is the test that is to be applied for both the stop of, and the search of moving motor vehicles.
>
> 2. Said reasonableness will be determined from the facts and circumstances of each case.
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> 3. Fewer foundation facts are necessary to support a finding of reasonableness when moving vehicles are involved, than if a house or a home were involved.
>
> 4. A stop of a motor vehicle for investigatory purposes may be based upon fewer facts than those necessary to support a finding of reasonableness where both a stop and a search is conducted by the police.

Further, in *People v Yeoman*, 218 Mich App 406, 410-411; 554 NW2d 577 (1996), the Court explained the requirements for making a constitutionally proper investigative stop:

> In order for law enforcement officers to make a constitutionally proper investigative stop, the "totality of the circumstances as understood and interpreted by law enforcement officers, not legal scholars, must yield a particular suspicion that the individual being investigated has been, is, or is about to be engaged in criminal activity," and "[t]hat suspicion must be reasonable and articulable." *People v Nelson*, 443 Mich 626, 632; 505 NW2d 266 (1993). In analyzing the totality of the circumstances, common sense and everyday life experiences predominate over uncompromising standards, and law enforcement officers are permitted, if not required, to consider the modes or patterns of operation of certain kinds of lawbreakers. *Id*. at 635-636. "The

> question is not whether the conduct is innocent or guilty. Very often what appears to be innocence is in fact guilt, and what is indeed entirely innocent may in some circumstances provide the basis for the suspicion required to make an investigatory stop." *Id*. at 632.
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> When dealing with a vehicle, the reasonable and articulable suspicion must be directed at the vehicle. *People v Bordeau*, 206 Mich App 89, 93; 520 NW2d 374 (1994). Fewer foundational facts are necessary to support a finding of reasonableness where a moving vehicle is involved than where a house or home is involved.… Also, a stop of a motor vehicle for investigatory purposes may be based upon fewer facts than those necessary to support a finding of reasonableness where both a stop and a search are conducted by the police.

Here, the events that retail store employees reported to the police officer were sufficient, under the circumstances, to reasonably arouse his suspicion. The police officer received information from store employees that two men had made several purchases over a twenty-four hour period, involving several thousand dollars worth of merchandise under circumstances that appeared suspicious to the merchants including frequent purchases, lack of time to consider the merchandise they were buying, and lack of inquiry regarding the products. The officer learned from one store employee who had spoken to the assistant manager at another store that the same two individuals had purchased nearly $6,000 worth of stereo equipment and camcorders, using similar business and personal checks as at the first store. Further, a store employee advised the officer that he sent another employee to the address on the co-conspirator's checks and discovered that it was a mail room and not a business. The store employees gave the police officer a description of the vehicle and the license plate number, as well as a description of the individuals involved. As he passed the vehicle, the officer found the behavior of the occupants suspicious, since all three turned toward him to look at him. His suspicions were further aroused when the van started to leave a parking lot, turning first away from one police officer's car, and then again in a different direction as the driver noticed another marked police vehicle. From the evidence, the police officer's suspicions were reasonable, and the stop of the vehicle was a proper investigative stop.

Because the stop itself was proper, the police officer was permitted to detain the vehicle briefly and make reasonable inquiries to dispel his suspicions or confirm them and arrest defendant pursuant to MCL 764.15(1)(d); MSA 28.874(1)(d), which provided at the time:

> A peace officer, without a warrant, may arrest a person in the following situations: … When the peace officer has reasonable cause to believe that a felony has been committed and reasonable cause to believe that the person has committed it. [MCL 764.15(1)(d); MSA 28.874(1)(d).][2]

According to the evidence presented below, during the police officer's inquiry, defendant identified himself with a driver's license as Jack Robert Blake. The police officer ran Blake's name through the law enforcement information network and discovered a few traffic violation warrants out of Detroit. When asked what his relationship with "Pace" was, defendant indicated that he worked on and off for him, and had known him for about one year. However, when the police officer discussed with "Pace"

his relationship with defendant, he heard a completely different story, including that "Pace" could not remember where he had met defendant but that he had known defendant forever. In addition, defendant could not tell the police officer where he had met "Pace," and said that it was possibly in Flint or Burton. Also, upon making the stop and approaching the van, the police officers noticed that the van was carpeted throughout with nice decor. The officers noted that the vehicle was not a cargo van, but that there was a large amount of merchandise inside. This information, coupled with the immediately preceding events that gave the officer a reasonable suspicion that the occupants of the vehicle had been engaged in criminal activity, justified the arrest of defendant without a warrant pursuant to MCL 764.15(1)(d); MSA 28.874(1)(d).

"Once an officer has made a lawful arrest of the occupant of a vehicle, the officer may search the occupant … as well as the entire passenger compartment of the vehicle." *Yeoman, supra* at 412. Accordingly, the evidence seized during the search was properly obtained, and the trial court did not err in failing to suppress it.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ William C. Whitbeck
/s/ Glenn S. Allen, Jr.

[1] A third man was present during the charged events. However, the third man's role in these events is not relevant for purposes of this opinion.

[2] The current version of this statute is substantively the same.