

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ALLEN WILLIAM MILLER,

Defendant-Appellee.

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UNPUBLISHED

February 2, 1999

No. 210283

Oakland Circuit Court

LC No. 96-006566 AR

Before: Murphy, P.J., and Fitzgerald and Gage, JJ.

PER CURIAM.

Pursuant to order of the Michigan Supreme Court, we consider this appeal of the prosecutor as on leave granted. The prosecutor appeals a district court dismissal of its possession of a controlled substance less than 25 grams charge against defendant, and the circuit court's subsequent affirmance of the dismissal. We reverse and remand.

At defendant's preliminary examination, Royal Oak Police Officer Gerald Beauchamp, a member of the city's undercover unit that investigated prostitution and drug-related crimes, testified to the circumstances surrounding defendant's arrest. On January 28, 1996, Beauchamp and his partners were conducting surveillance on the Uptown Motel located within the city limits of Royal Oak. Beauchamp indicated that from Royal Oak police experience and anonymous tips it was known that drug sales and usage occurred at the Uptown Motel. Beauchamp explained that he had been involved in twenty to thirty prior drug investigations. After they had been monitoring the motel for fifteen or twenty minutes, the officers saw defendant drive away alone. Beauchamp testified that he and his partners followed defendant directly from the motel to another known drug area on Yacama Street in downtown Detroit. The officers observed defendant proceed approximately halfway down the block, pull over to the curb and turn off his vehicle's lights. According to Beauchamp, a male then approached defendant's vehicle, and engaged in a ten to twenty second, hand-to-hand exchange with defendant. Defendant then drove away for half of a block without headlights before turning them back on. Beauchamp stated that although the officers could not see what specifically defendant exchanged with the man who approached his vehicle, he believed based on his prior experience as a police officer that defendant had engaged in a drug transaction. The officers followed defendant back north on Interstate

75 toward Royal Oak. He was driving unsteadily at approximately 45 mph, but Beauchamp's testimony did not establish that defendant had clearly committed a traffic violation. When the defendant pulled off the expressway in Hazel Park, the officers pulled him over.

Beauchamp presumably also would have testified at the preliminary examination that in searching defendant's car, the officers discovered a quantity of what the parties stipulated for purposes of the preliminary examination was cocaine. However, defense counsel objected to the prosecutor's inquiry regarding what occurred during the traffic stop on the basis that the traffic stop was invalid for lack of probable cause, and that therefore the cocaine must be suppressed. The district court agreed that the officers had no basis for stopping defendant's vehicle, granted defendant's motion to exclude any evidence arising from the stop of defendant's vehicle, and granted defendant's motion to dismiss the charges.

The prosecutor first contends that the district court incorrectly reviewed Beauchamp's testimony to determine whether the officers had probable cause to stop defendant's vehicle, when police officers need only a reasonable suspicion to justify an investigative traffic stop. It is uncontradicted, however, that the officers were outside the City of Royal Oak when they pulled over defendant's vehicle and arrested him, and were not acting in conjunction with officers of another jurisdiction. See MCL 764.2a; MSA 28.861(1). Generally, police officers who make a warrantless arrest outside their territorial jurisdiction are treated as private persons, and thus have all the powers of arrest possessed by such private persons. *People v Meyer*, 424 Mich 143, 154; 379 NW2d 59 (1985). Given probable cause, any citizen, including a police officer acting outside of his jurisdiction, may make an arrest for a felony committed in his presence. *People v Bashans*, 80 Mich App 702, 713; 265 NW2d 170 (1978), citing MCL 764.16; MSA 28.875. See also *People v Davis*, 133 Mich App 707, 715; 350 NW2d 796 (1984).

The district court suppressed any testimony by Beauchamp regarding the officers' stop of defendant's vehicle and subsequent search on the basis that the officers had lacked probable cause to detain defendant. Probable cause to arrest exists where the facts and circumstances within an officer's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been committed. *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996). In reviewing the district court's decision to suppress the evidence regarding the search of defendant's vehicle, we engage in a de novo review of the entire record, *People v Cheatham*, 453 Mich 1, 29-30; 551 NW2d 355 (1996), while reviewing its findings of historical fact only for clear error. *People v Taylor*, 454 Mich 580, 595; 564 NW2d 24 (1997).

Our independent review of the uncontradicted facts to which Beauchamp testified leads us to conclude that the district court erred in finding that the officers lacked probable cause to stop defendant's vehicle. The officers observed defendant leaving a Royal Oak motel that, in their experience, was an establishment known for drug use and sales. From there, defendant traveled directly to another known drug area in Detroit, pulled over to the curb and turned off his headlights, and engaged in a brief hand-to-hand exchange with another man who had approached his vehicle. Defendant then pulled away, turned on his headlights, and proceeded to leave Detroit and head back

toward Royal Oak. We find that the totality of these observations of the officers would lead a reasonably cautious person to conclude that defendant had engaged in the sale of a controlled substance. *Champion, supra*. Therefore, the officers properly arrested defendant and searched his vehicle.

Defendant raises several arguments in support of the district court's determination that the officers lacked probable cause. First, defendant challenges the officers' decision to follow him, suggesting that the officers had not observed him engage in any criminal activity, and thus had no reason to follow him as he left the motel. However, this argument ignores that at all times the officers legally observed defendant's actions on public streets, for which observation they needed no justification or permission; defendant cites no authority to the contrary. The pertinent inquiry is whether, at the time the officers stopped defendant's vehicle and arrested him, they had probable cause to do so. *People v Lyon*, 227 Mich App 599, 611; 577 NW2d 124 (1998); *People v Richardson*, 204 Mich App 71, 79; 514 NW2d 503 (1994). The fact that defendant had initially departed from a known drug area constitutes one factor that contributed to the officers' ultimate probable cause determination.

Defendant also suggests that his behavior in engaging in the hand-to-hand exchange could have represented nothing more than a greeting exchanged between him and the man who approached his vehicle, especially in light of Beauchamp's statement that he failed to see drugs or money exchanged. However, to establish probable cause requires only a probability or substantial chance of criminal activity, not an actual showing of criminal activity. *Lyon, supra*. The occurrence of the exchange, when considered in the context of the surrounding circumstances, including defendant's travel from one known drug area to another, could certainly have led a reasonably cautious person to conclude that a substantial chance existed that defendant had engaged in a drug deal. Beauchamp testified that, in light of his participation in twenty to thirty prior narcotics investigations, he did in fact reach this conclusion. To the extent that defendant further argues that the prosecutor failed to present evidence supporting Beauchamp's bare assertion that Yacama Street in downtown Detroit qualified as a known drug area, we note that defendant failed to challenge Beauchamp's statement at the preliminary examination.

Given our finding that the officers detained defendant based on valid probable cause that he had been involved in a drug sale and our conclusion that the district court erred in suppressing the evidence obtained during the search of defendant's vehicle, we must remand this case to the district court for continuation of the preliminary examination.

Reversed and remanded. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ Hilda R. Gage