STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

CHRISTOPHER E. SUMTER,

Defendant-Appellee.

UNPUBLISHED
October 3, 2000

No. 214584
Wayne Circuit Court
LC No. 98-005096

Before: Collins, P.J., and Jansen and Zahra, JJ.

PER CURIAM.

Defendant was charged with possession with intent to deliver more than 225 but less than 650 grams of cocaine, MCL 333.7401(2)(a)(ii); MSA 14.15(7401)(2)(a)(ii). The trial court granted defendant's motion to suppress evidence and dismissed the case. The prosecution appeals as of right. We reverse and remand for reinstatement of the charge against defendant.

At the suppression hearing, a Michigan state trooper testified that he stopped defendant for speeding. Defendant could not produce a valid driver's license, but did produce a rental agreement for the car in his mother's name. Defendant's name did not appear on the agreement. The trooper asked defendant to step out of the car and then conducted a patdown search for weapons, which revealed three packages of marijuana. The trooper also detected an odor of burnt marijuana coming from the vehicle. The trooper asked defendant twice whether there was more contraband in the vehicle, and both times defendant responded by asking if his brother could drive the vehicle home. After placing defendant under arrest, the trooper searched the vehicle and found cocaine in the trunk. The circuit court granted defendant's motion to suppress the evidence on the basis that the facts as testified to by the state trooper did not provide a legal basis for the search of the vehicle defendant was driving.

The prosecutor argues first on appeal that defendant did not have standing to challenge the search of the vehicle because he was not an authorized driver of the vehicle in question. However, both the prosecutor and defendant stipulated to defendant's standing in the lower court. A defendant should not be allowed to assign error on appeal to something his own counsel deemed proper at trial. *People v Green*, 228 Mich App 684, 691; 580 NW2d 444 (1998). To do so would allow a defendant to harbor error as an appellate parachute. *Id.* Accordingly, we decline to address this issue.

The prosecution argues next that the trial court erred by finding that there was no legal basis for the search of the vehicle. We agree. We review a trial court's findings of fact regarding a motion to suppress for clear error, while a trial court's ultimate decision regarding the motion is reviewed de novo. *People v Echavarria*, 233 Mich App 356, 366; 592 NW2d 737 (1999). Clear error exists where this Court is left with the definite and firm conviction that a mistake has been made. *People v Hampton*, 237 Mich App 143, 148; 603 NW2d 270 (1999).

Both the federal and Michigan Constitutions guarantee the protection against unreasonable searches and seizures. US Const, Ams IV, XIV; Const 1963, art 1, § 11; *People v Kazmierczak*, 461 Mich 411, 417; 605 NW2d 667 (2000). Generally, a search warrant, supported by probable cause, is required before a search is deemed reasonable. *People v Davis*, 442 Mich 1, 10; 497 NW2d 910 (1993). For the automobile exception to the search warrant requirement to apply, there must exist probable cause to believe that contraband or evidence of a crime may be found in a particular location. *People v Mayes (After Remand)*, 202 Mich App 181, 185; 508 NW2d 161 (1993). In making this determination, a police officer assesses the totality of the circumstances. *Id*. at 185-186. If the facts at hand would support the issuance of a search warrant, a search is not unreasonable even though a warrant was not actually obtained. *People v Levine*, 461 Mich 172, 179; 600 NW2d 622 (1999). Further, if probable cause justifies the search of an automobile, it justifies the search of every part of the vehicle and any of its contents which might conceal the object sought. *People v Carter*, 194 Mich App 58, 61; 486 NW2d 93 (1992).

Here, probable cause existed under the totality of the circumstances to justify a search of the vehicle. The recovery of three packages of marijuana during the patdown search of defendant and defendant's repeated requests that his brother be permitted to drive the car home in response to the trooper's questioning whether there was any other contraband inside the vehicle, in addition to the odor of burnt marijuana inside the vehicle[1], were sufficient for the trooper to conclude that additional contraband may have been located inside the vehicle. *Mayes, supra* at 185. Therefore, the circuit court erred in suppressing the cocaine found in the trunk of the vehicle defendant was driving and dismissing the case.

Reversed and remanded for reinstatement of the charge against defendant. We do not retain jurisdiction.

/s/ Jeffrey G. Collins
/s/ Kathleen Jansen
/s/ Brian K. Zahra

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[1] We note that our Supreme Court recently held that the smell of marijuana alone may establish probable cause to search a motor vehicle pursuant to the motor vehicle exception to the warrant requirement. *Kazmierczak, supra* at 426-427.