STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 17, 2006
v	No. 257985 Oakland Circuit Court
CHARLES JOHNSON, JR., Defendant-Appellant.	LC No. 04-196729-FH

Before: Murray, P.J., and Jansen and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), and possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii). Defendant was sentenced, as a second habitual offender, MCL 769.10, to 1 ½ to 30 years' imprisonment for his possession with intent to deliver less than 50 grams of cocaine conviction, and one to six years' imprisonment for his possession with intent to deliver marijuana conviction. We affirm.

On appeal, defendant argues that the trial court erred when it denied his motion to suppress evidence because the stop and subsequent search of defendant and the vehicle he was driving violated his Fourth Amendment right to be free from unreasonable seizures and searches. We disagree.

In evaluating a motion to suppress, this Court reviews a trial court's factual findings for clear error. *People v VanTubbergen*, 249 Mich App 354, 359-360; 642 NW2d 368 (2002). Regard should be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C). "To the extent that a trial court's ruling on a motion to suppress involves an interpretation of the law or the application of a constitutional standard to uncontested facts, our review is de novo." *People v Attebury*, 463 Mich 662, 668; 624 NW2d 912 (2001).

Both the state and federal constitutions guarantee protection against unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11. Neither the state nor federal constitution forbids all searches and seizures, but only unreasonable ones. *People v Rice*, 192 Mich App 512, 517; 482 NW2d 192 (1992). A person has been "seized" under the Fourth Amendment when a police officer has restrained the person's individual freedom. *People v*

Chambers, 195 Mich App 118, 121; 489 NW2d 168 (1992), citing *Terry v Ohio*, 392 US 1, 16; 88 S Ct 1868; 20 L Ed 2d 889 (1968).

The protection against unreasonable searches and seizures does not prevent police officers from making a "valid investigatory stop if they possess 'reasonable suspicion' that crime is afoot." *People v Champion*, 452 Mich 92, 98; 549 NW2d 849 (1996).

> Reasonable suspicion entails something more than an inchoate or unparticularized suspicion or 'hunch,' but less than the level of suspicion required for probable cause. A valid investigatory stop must be justified at its inception and must be reasonably related in scope to the circumstances that justified interference by the police with a person's security. Justification must be based on an objective manifestation that the person stopped was or was about to be engaged in criminal activity as judged by those versed in the field of law enforcement when viewed under the totality of the circumstances. The detaining officer must have had a particularized and objective basis for the suspicion of criminal activity. [*Id*. at 98-99 (internal citations omitted).]

In determining whether reasonable suspicion exists, "circumstances must be viewed 'as understood and interpreted by law enforcement officers, not legal scholars.'. . . In analyzing the totality of the circumstances, the law enforcement officers are permitted, if not required, to consider 'the modes or patterns of operation of certain kinds of lawbreakers.'" *People v Oliver*, 464 Mich 184, 192, 196; 627 NW2d 297 (2001), quoting *People v Nelson*, 443 Mich 626, 632, 636; 505 NW2d 266 (1993).

Here, defendant was stopped by the police because he was speeding and was not wearing his seatbelt. He was then detained, and a search of his body and car ensued. This Court must evaluate the initial stop, search of defendant's body, and subsequent search of defendant's car in order to determine whether the police conduct fell within an exception to the warrant requirement for each action. *People v Kazmierczak*, 461 Mich 411, 420; 605 NW2d 667 (2000).

First, the initial stop of defendant was unquestionably constitutional. Police may stop, question, and detain a person who violates traffic laws while driving. *People v Lewis*, 251 Mich App 58, 70; 649 NW2d 792 (2002). At the evidentiary hearing, Officer Wood testified that he had developed the ability to accurately estimate the speed at which an automobile is traveling from the nine years of experience and training he has had as a patrol officer. He further testified that he estimated the Contour defendant was driving was traveling about 50 miles per hour in a 35 mile per hour zone. Wood also testified that when he caught up to the vehicle, he observed that neither defendant nor the passengers were wearing safety belts.

Although defendant and Clifton Manns gave testimony which conflicted with Officer Wood, this Court must give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C). The trial court stated in its opinion and order denying defendant's motion to suppress that it "finds that Officer Wood was credible." According to Wood, he observed defendant commit two traffic violations. The trial court found this testimony to be credible. Therefore, the initial stop of defendant was in conformity with the Fourth Amendment. *Lewis*, *supra* at 70.

Second, police had reasonable suspicion to further detain and frisk defendant after initially being pulled over. A police officer may perform a limited pat down search for weapons if the officer has a reasonable suspicion that the individual is armed, and thus poses a danger to the officer or to other persons. *People v Custer*, 465 Mich 319, 328; 630 NW2d 870 (2001), citing *Terry, supra* at 30-31. Wood testified, at the evidentiary hearing, describing the events as follows:

> *Q*. Now, explain for the Court, please, in as best detail as you can, the reason why you determine you're going to remove [defendant] from the car and pat him down?
>
> *A*. For officer safety.
>
> *Q*. What about your officer safety cause [sic] you to bring this man out of the car and subject him to a pat down?
>
> *A*. The fact when I pulled up next to the vehicle, he was attempting to retrieve or conceal something which I thought may have been a weapon, which I observed. And then once the vehicle was stopped, they still disregarded my orders to keep their hands where I could see them and stop moving about the vehicle.
>
> *Q*. In your tanning [sic] and experience, have you encountered similar situations in the past, both practically in the street and in the training room?
>
> *A*. Yes, I have.
>
> *Q*. And in your practical experience, has this sort of activity resulted in the seizure of weapons?
>
> *A*. Yes, it has.

Wood testified that he took into consideration defendant's actions of moving up and down, reaching towards his groin area, and his experience and training in forming a reasonable suspicion that defendant may have been armed. Wood may consider "the modes or patterns of operation of certain kinds of lawbreakers" when he is forming reasonable suspicion. *Oliver, supra* at 192. Therefore, Wood's pat down of defendant was based on a reasonable suspicion that he may have possessed weapons. Thus, the search was constitutional.

Third, under the plain feel exception to the warrant requirement, the seizure of the Superglue container was constitutional. In *Champion*, our Supreme Court adopted the plain feel exception to the warrant requirement as it was articulated by the United States Supreme Court in *Minnesota v Dickerson*, 508 US 366, 375-376; 113 S Ct 2130; 124 L Ed 2d 334 (1993).

> If a police officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass *makes its identity immediately apparent,* there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons . . . . [T]he Fourth Amendment's requirement that

> the officer have *probable cause to believe that the item is contraband* before seizing it ensures against excessively speculative seizures. [*Champion, supra* at 104, quoting *Dickerson, supra* at 375-376.]
>
> Wood testified as follows, describing how he found the Superglue container:
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> At the point I began to run my hand down the front of his body, I had him kind of spread his legs and face sideways. I did not have his hands up on the car. I just began to ran [sic] my hand down the front of him. As I ran it down the front part of his pants, his groinal [sic] area, I felt a hard object in the front of his pants.

At this point in time, Wood asked defendant, "What's that?" Defendant responded that it was "dope." Defendant was then placed under arrest and the object was seized. Given defendant's response to Wood's question, that the object contained "dope," paired with his behavior in the car and Wood's experience as an officer, Wood had probable cause to believe that the container contained contraband and to arrest defendant. *Champion, supra* at 104. Thus, Wood's seizure of the container from defendant's person was constitutional under the plain feel exception to the warrant requirement.

Finally, the search of the vehicle subsequent to defendant's arrest was constitutional. This Court has held that a defendant does not have standing to challenge the search of a vehicle when he does not assert a proprietary or possessory interest in it. *People v Armendarez*, 188 Mich App 61, 71; 468 NW2d 893 (1991). Here, defendant was not a party to the rental agreement, and thus, was not an authorized user of the vehicle; therefore, he does not have standing to contest the search of the vehicle.

Even if defendant did have standing, the search was constitutional pursuant to the search incident to a lawful arrest exception to the warrant requirement. *People v Eaton*, 241 Mich App 459, 463; 617 NW2d 363 (2000), citing *Chimel v California*, 395 US 752, 763; 89 S Ct 2034; 23 L Ed 2d 685 (1969). When conducting a search incident to a lawful arrest, the police may search the arrestee and the area within his immediate control. *Eaton, supra* at 463. This includes the search of the passenger compartment of an automobile occupied by the arrestee as a contemporaneous incident of that arrest. *Id.*, citing *New York v Belton*, 453 US 454, 460; 101 S Ct 2860; 69 L Ed 2d 768 (1981). The officer may also examine the contents of any containers found within the passenger compartment. *Belton, supra* at 460. Wood's search of defendant was lawful, and Wood had probable cause to believe defendant was in possession of crack cocaine. Therefore, defendant was lawfully arrested, and the search of the passenger compartment of the vehicle, and any containers therein, was lawful.[1]

[1] The search of the vehicle was also constitutional pursuant to the automobile exception to the warrant requirement. *Pennsylvania v Labron*, 518 US 938, 940; 116 S Ct 2485; 135 L Ed 2d 1031 (1996). Under the automobile exception to the warrant requirement, Wood and Main were permitted to search the vehicle so long as probable cause existed to believe it contained contraband. *Id.* Considering Wood confiscated what he believed to be crack cocaine from

(continued…)

Affirmed.

/s/ Christopher M. Murray
/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly

(…continued)

defendant's person, and that he had observed each of the occupants of the car moving their hands around inside of the car, probable cause existed to search the car for drugs.