

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL KELLY MINEAU III,

Defendant-Appellant.

UNPUBLISHED

April 22, 2021

No. 354264

Delta Circuit Court

LC No. 19-010072-FH

Before: MURRAY, C.J., and MARKEY and LETICA, JJ.

PER CURIAM.

Defendant appeals by leave granted¹ the trial court’s order denying his motion to suppress evidence. After a traffic stop in November 2019, defendant was arrested and charged with possession of methamphetamine, MCL 333.7403(2)(b)(i). Arguing that police lacked probable cause to search his automobile, defendant moved to suppress the methamphetamine seized during the traffic stop. The trial court denied defendant’s motion. We affirm.

I. BACKGROUND

This case arises from a traffic stop conducted by Deputy James McDonough, and the subsequent discovery of methamphetamine in a pack of cigarettes. On Wednesday, November 6, 2019, at about 11 p.m., Deputy McDonough pulled over a minivan because of malfunctioning brake lights. Defendant was driving the vehicle, despite not having a valid driver’s license or insurance for the vehicle. Two 17-year-old girls, MC and MM, were passengers. MM was sitting in the front passenger seat and MC was in the third-row seating. The seat behind the driver’s side had been removed.

According to Deputy McDonough, defendant seemed very nervous. The 35-year-old defendant, who is of legal drinking age, told Deputy McDonough that he had just purchased alcohol from a store and it was in the vehicle. Deputy McDonough was familiar with MM and

¹ *People v Mineau III*, unpublished order of the Court of Appeals, entered October 9, 2020 (Docket No. 354264).

MC from prior dealings, and knew that they had a history of frequent underage drinking. When Deputy McDonough asked defendant whether he purchased alcohol for the minors, defendant did not answer. The trio's stories regarding where the ride originated did not match and "just nothing was adding up."

Deputy McDonough asked for consent to search the vehicle, but neither defendant nor his wife, who owned the vehicle, consented. Nonetheless, after the three exited the vehicle, Deputy McDonough searched it, believing that he had probable cause given the indicia that defendant purchased alcohol for the minor girls. Deputy McDonough found a bottle of wine and two Twisted Tea containers in the area between the driver's seat and the front passenger seat. Twisted Tea is an alcoholic beverage. In that same area, Deputy McDonough saw an unlabeled prescription bottle with unidentified white pills. On the basis of his past experiences with similar unlabeled prescription bottles, Deputy McDonough believed the pills were either an illegal controlled substance or a prescription-controlled substance.² Thus, Deputy McDonough believed that he had probable cause to search the entire vehicle for controlled substances.

On the floor behind the driver's seat, Deputy McDonough found a pack of cigarettes. After flipping open the lid, Deputy McDonough saw a small baggie containing a crystal-like substance. As a canine handler, who had used methamphetamine for narcotics training, Deputy McDonough believed the substance was methamphetamine. Defendant was then arrested.

Defendant moved to suppress the evidence of the methamphetamine, arguing that Deputy McDonough lacked probable cause to search the vehicle. The trial court disagreed. Drawing from Deputy McDonough's testimony, the trial court concluded that MC and MM's prior history of underaged drinking, coupled with defendant's admission that he had alcohol in the vehicle, gave Deputy McDonough probable cause to search the vehicle for alcohol. And once Deputy McDonough found the unlabeled prescription bottle, he had probable cause to search the rest of the vehicle for narcotics. As a result, the trial court concluded that the automobile exception to the warrant requirement applied and denied defendant's motion to suppress. This appeal followed.

II. DISCUSSION

On appeal, defendant argues that the trial court erred by denying his motion to suppress because Deputy McDonough did not have probable cause to search the vehicle. We disagree.³

When considering a motion to suppress evidence, we review a trial court's factual findings to determine if they are clearly erroneous, and we review a trial court's conclusions of law de novo. *People v Snider*, 239 Mich App 393, 406; 608 NW2d 502 (2000). A trial court's findings of fact

² Deputy McDonough later determined that the white pills were Claritin. At the time he initially saw them, however, he could not identify them as being over-the-counter medication.

³ The prosecution argues that this Court should dismiss defendant's appeal for failing to timely file his brief, citing MCR 7.111(A). That rule applies to appeals in the circuit court, not this Court. Compare MCR 7.111(A) with MCR 7.211(C)(2)(b). Moreover, we previously addressed defendant's failure to timely file a brief, *People v Mineau III*, unpublished order of the Court of Appeals, entered December 14, 2020 (Docket No. 354264), and did not dismiss the appeal. See MCR 7.217(C) ("In all instances of failure to prosecute an appeal to hearing as required, the chief judge or another judge may take such other action as is deemed appropriate.").

are clearly erroneous “if, after we have reviewed the entire record, we are definitely and firmly convinced that it made a mistake.” *People v Armstrong*, 305 Mich App 230, 242; 851 NW2d 856 (2014).

Both the United States Constitution and the Michigan Constitution protect against unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11; *People v Mead*, 503 Mich 205, 212; 931 NW2d 557 (2019). “In order to show that a search was in compliance with the Fourth Amendment, the police must show either that they had a warrant or that their conduct fell within one of the narrow, specific exceptions to the warrant requirement.” *People v Kazmierczak*, 461 Mich 411, 418; 605 NW2d 667 (2000). In this case, the trial court found that Deputy McDonough’s conduct fell within the automobile exception to the warrant requirement.⁴

Under the automobile exception, police may search a vehicle without a warrant so long as they have probable cause to believe the motor vehicle contains contraband or evidence of a crime. *Id.* at 418-419. See also *People v Levine*, 461 Mich 172, 179; 600 NW2d 622 (1999) (quotation marks and citation omitted) (noting that, under the automobile exception, “a search is not unreasonable if based on facts that would justify the issuance of a warrant, even though a warrant has not actually been obtained.”). “This ability to search without a warrant extends to closed containers in the vehicle that might conceal the object of the search” *Kazmierczak*, 461 Mich at 422.

Probable cause exists when “there is a substantial basis for inferring a fair probability that contraband or evidence of a crime will be found in a particular place.” *Id.* at 417-418 (quotation marks and citation omitted). In evaluating whether a police officer had probable cause to conduct a search, a court must examine the totality of the circumstances that were before that officer at the time of the search. *People v Cohen*, 294 Mich App 70, 75; 816 NW2d 474 (2011). And a court must examine these circumstances “in light of [the officer’s] experience and training, not in a vacuum or from a hypertechnical perspective.” *Levine*, 461 Mich at 185.

The trial court credited Deputy McDonough’s testimony at the suppression hearing. According to Deputy McDonough, defendant took an unusually long time to stop the vehicle after Deputy McDonough activated his police lights. When Deputy McDonough approached the vehicle, defendant was acting nervous. Defendant did not have a valid driver’s license or insurance for the vehicle. MC and MM were passengers in the vehicle, who Deputy McDonough knew had a history of underage drinking. Defendant, MC, and MM gave inconsistent accounts about where they were coming from, although defendant admitted that he had just purchased alcohol at a store, and one of the underage girls said that the alcohol was between the driver’s seat and the front passenger seat. Considering these circumstances, a reasonable person would have a substantial basis to infer a fair probability that evidence of defendant’s furnishing alcohol to minors would be found in the minivan. *Kazmierczak*, 461 Mich at 417-418. For this reason, the trial court correctly concluded that Deputy McDonough had probable cause to search the vehicle for alcohol.

⁴ Although defendant’s argument on appeal contains a brief reference to whether there was consent to search the vehicle, it is clear that neither defendant nor his wife consented to the search, and the trial court’s decision was not based on consent.

Next, defendant argues that, even if Deputy McDonough had probable cause to search the vehicle for alcohol, he did not have probable cause to search for narcotics. Defendant asserts that because Deputy McDonough could not identify the pills in the unlabeled prescription bottle, he did not have probable cause to search for narcotics. We disagree.

It was not necessary for Deputy McDonough to be certain whether the pills were illegal narcotics or controlled substances. As this Court has held, “ ‘Probable cause does not require certainty. Rather, it requires only a probability or substantial chance of criminal activity.’ ” *People v Mullen*, 282 Mich App 14, 27; 762 NW2d 170 (2008), quoting *People v Champion*, 452 Mich 92, 111 n 11; 549 NW2d 849 (1996). And drawing on his past experience from prior narcotics investigations, Deputy McDonough concluded there was a substantial chance the pills in the unlabeled prescription bottle were narcotics or controlled substances. Accordingly, Deputy McDonough had a substantial basis for inferring a fair probability that he would find additional narcotics in the vehicle, and he could therefore search all containers within the vehicle reasonably likely to contain narcotics. *Kazmierczak*, 461 Mich at 417-418, 422. This includes the pack of cigarettes found on the floor behind the driver’s seat, which held the methamphetamine.

Because the initial search of the vehicle for alcohol and the subsequent search for narcotics or controlled substances were supported by probable cause, the trial court properly denied defendant’s motion to suppress.

Affirmed.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Anica Letica