

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

1989 PONTIAC GRAND AM,

Defendant,

and

BYRON OVIE WEBB,

Defendant-Appellant.

UNPUBLISHED

May 9, 1997

No. 188136

Wayne Circuit Court

LC No. 95-549203-CF

Before: Wahls, P.J., and Gage and W.J. Nykamp,* JJ.

PER CURIAM.

Following a bench trial, the trial court ordered forfeiture of defendant's 1989 Pontiac Grand Am pursuant to the controlled substance forfeiture statutes, MCL 333.7521 *et seq.*; MSA 14.15(7521) *et seq.* Defendant appeals as of right. We affirm.

First, defendant asserts that the seizure of his car was unlawful.¹ An automobile which is used to transport customers to and from the home of an illicit drug dealer for the purpose of purchasing cocaine is subject to forfeiture. MCL 333.7521(1)(d); MSA 14.15(7521)(1)(d); *In re Forfeiture of One 1987 Chevrolet Blazer*, 183 Mich App 182, 185; 454 NW2d 201 (1990). The police are permitted to seize a vehicle without a warrant where there is probable cause to believe that the vehicle was used or was intended to be used in violation of the controlled substance statutes. MCL 333.7522(d); MSA 14.15(7522)(d). At the forfeiture hearing, a police officer testified that defendant told him that he and Germaine Chapman, defendant's wife who was also the driver of the car, had come to the address where the car was seized so that Chapman could purchase a rock of cocaine. This evidence was sufficient to establish that the police had probable cause to seize defendant's car without a warrant. *Id.*

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

Next, defendant argues that the trial court lacked jurisdiction to issue the forfeiture order because the police officers who seized the car were acting outside their own municipality. The officers were members of the Royal Oak Township Police Department, and conducted the search and seizure in Detroit. Assuming arguendo that these officers lacked authority to search and seize, see MCL 764.2a; MSA 28.861(1), the exclusionary rule does not apply to evidence seized by police who were acting outside their jurisdiction. *People v Clark*, 181 Mich App 577, 580-581; 450 NW2d 75 (1989). Accordingly, the officers' lack of authority in this case did not deprive the trial court of jurisdiction.

Defendant next argues that the prosecution failed to meet its burden of proof because it did not establish a substantial connection between defendant's car and the illegal activity. We disagree. The prosecution presented evidence that the forfeited vehicle was used with defendant's apparent knowledge to transport his wife to and from the home of a drug dealer for the purpose of purchasing cocaine. This evidence was sufficient to establish a substantial connection to the illegal activity. *1987 Chevrolet Blazer, supra*, p 185.

Defendant also argues that his rights to due process and to confront witnesses were violated because none of the arresting or seizing officers testified at the hearing. We disagree. A defendant's rights to due process and confrontation are not violated by the prosecution's failure to call witnesses. *People v Lee*, 212 Mich App 228, 257; 537 NW2d 233 (1995).

Finally, defendant asserts that the trial judge exceeded his authority and acted with partiality and subjectivity during the hearing. The trial court did participate extensively in questioning Chapman during her cross-examination by the defense. While a trial court may question witnesses to clarify testimony or elicit additional relevant information, the trial court must exercise caution and restraint to ensure that its questions are not intimidating, argumentative, prejudicial, unfair, or partial. *People v Cheeks*, 216 Mich App 470, 480; 549 NW2d 584 (1996). In addition, a trial court may not assume the prosecutor's role with advantages unavailable to the prosecution. *People v Davis*, 216 Mich App 47, 51; 549 NW2d 1 (1996).

To preserve this issue for appellate review, a defendant must move to disqualify the judge in conformity with MCR 2.003. *In re Forfeiture of \$53*, 178 Mich App 480, 497; 444 NW2d 182 (1989). This was not done in the trial court so we need not review this issue. Additionally, a trial court's comments are subject to a harmless error test. *People v Weathersby*, 204 Mich App 98, 110; 514 NW2d 493 (1994). Even assuming that the trial court's questions crossed the line of partiality, we do not find that his conduct deprived the defense of a fair trial or caused prejudice. *Id.*, p 111.

Affirmed.

/s/ Myron H. Wahls
/s/ Hilda R. Gage
/s/ Wesley J. Nykamp

¹Defendant argues that his arrest as well as the seizure of the car was unlawful, but since defendant was released at the scene and never charged, we assume defendant intends to challenge the lawfulness of the car seizure rather than the arrest.