

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

CHARLES EDWARD WILLIAMS,

Defendant-Appellee.

UNPUBLISHED

April 21, 1998

No. 199509

Oakland Circuit Court

LC No. 95-141044-FH

Before: Saad, P.J., and Wahls and Gage, JJ.

PER CURIAM.

The prosecutor appeals as of right from a trial court order dismissing the charge against defendant following entry of an order suppressing evidence. We reverse and remand.

Defendant was charged with possession with intent to deliver less than fifty grams of cocaine. MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). At the preliminary exam, defendant asked the district court to deny the bindover on the ground that the cocaine seized from his car was the product of an illegal search. The district court found probable cause for the search of the car, and bound defendant over. Before trial, defendant renewed his motion to suppress. Pursuant to the parties' stipulation, the circuit court relied on the preliminary examination transcript rather than conducting a separate evidentiary hearing.

The evidence adduced at the preliminary examination showed that a narcotics unit of the Pontiac Police Department was conducting an investigation of defendant, who had previously been arrested for a controlled substance offense. On September 23, 1994, the officers had defendant under surveillance at his home in Pontiac. Defendant left his home and drove around town for about an hour. During that time, defendant stopped and met briefly with three or four people, an activity which, according to the officer, was consistent with street level narcotics transactions. One of those people was a confidential informant who purchased crack cocaine from defendant in a "controlled buy." Defendant eventually stopped at an ostensible tire repair shop which the police knew to be a gambling house. The police had information that defendant planned to sell drugs there. That location had been under investigation for

some time and the police had already obtained a search warrant, which they executed while defendant was there.

When the officers entered the gambling house, defendant, who had been seated at a table playing cards, dove under the table. A search of defendant's person produced a pager, car keys, a wallet, and over \$500 in cash, but no drugs. One of the officers then searched defendant's car. In the ashtray he found a baggie of crack cocaine weighing about six grams. After reviewing this evidence, the trial court concluded that there were no exigent circumstances justifying the search of defendant's car, and suppressed the cocaine on that basis. The trial court did not dispute the district court's conclusion that the police had probable cause to search defendant's car.

On appeal, the prosecutor argues that the trial court erred in requiring exigent circumstances to justify the search. We agree. In *People v Clark*, 220 Mich App 240; 559 NW2d 78 (1996), another panel of this Court addressed the automobile exception to the warrant requirement:

That exception provides that a search without a warrant of an automobile is reasonable if probable cause exists to believe it contains contraband. Although one of the justifications for the automobile exception is exigency, where, as here, no exigency exists, "if the police have probable cause to search a car, they need not get a search warrant first even if they have the time and opportunity" to do so. The basis for this rule is the lessened expectation of privacy in an automobile. [*Id.* at 242 (citations omitted).]

The test for probable cause is whether the facts and circumstances known to the officers would warrant a person of reasonable prudence to believe that evidence of a crime or contraband sought is in a stated place. *People v Carter*, 194 Mich App 58, 61; 486 NW2d 93 (1992).

As stated in *Clark, supra*, no exigent circumstances were necessary to justify the search of defendant's car. We agree with the district court that the facts and circumstances known to the officers were sufficient to constitute probable cause to search defendant's car. Defendant was observed engaging in activity consistent with the sale of narcotics and was seen to make an actual sale of crack cocaine to a confidential informant. He then proceeded to a place where, the police had been told, he planned to sell narcotics. When defendant was searched, he was found to be in possession of a pager and a large quantity of cash, but no drugs. Given that defendant had been selling narcotics from his car a short time earlier, and that defendant's car had been under constant surveillance, the officers could reasonably conclude that narcotics would be there. Under these circumstances, the warrantless search of defendant's car was proper. We therefore reverse the trial court orders suppressing the cocaine and dismissing the charge against defendant.

Reversed and remanded. We do not retain jurisdiction.

/s/ Henry W. Saad
/s/ Myron H. Wahls

/s/ Hilda Gage