

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant/Cross-Appellee,

v

MICHAEL PATRICK DAVIS,

Defendant-Appellee/Cross-
Appellant.

UNPUBLISHED

April 17, 2003

No. 241294

Lapeer Circuit Court

LC No. 01-007307-FC

Before: Gage, P.J., and Wilder and Hood, JJ.

PER CURIAM.

The prosecutor appeals, by leave granted, from the trial court's order granting defendant's motion to suppress evidence obtained from defendant's car. Defendant cross appeals from the trial court's denial of his motion to suppress statements and to quash the arrest for lack of probable cause.¹ We reverse the trial court's decision to grant suppression of the evidence obtained from defendant's car and affirm the denial of the motion to suppress statements and to quash the arrest for lack of probable cause.

Defendant was charged with open murder, MCL 767.71, arising out of the death of the victim, his former girlfriend. At approximately 9:45 p.m., a 911 call was placed from the Whistle Stop Party Store, located approximately one mile from the victim's apartment. The caller gave a false name, but told the 911 operator that a woman was seriously injured at the victim's address and that the front door to the apartment was open. When police arrived at that address, the apartment was dark, but the door was open and a seriously injured female was lying on the floor. There were no signs of forced entry into the apartment, and it had not been ransacked. Based on the accuracy of the details provided by the 911 call, police believed that the caller was the perpetrator of the assault. Police learned from the victim's daughter that defendant was the victim's boyfriend. Although the relationship was broken off months earlier, the two continued to see each other, and defendant did not want the relationship to end. Defendant was seen near the Whistle Stop before the 911 call was placed.

¹ Following an evidentiary hearing, the trial court denied defendant's motions in all respects. After receipt of defendant's motion for reconsideration, the trial court reversed its decision regarding the suppression of evidence from defendant's car, but affirmed its other rulings regarding the statements made by defendant and the determination of probable cause.

Defendant's vehicle was found parked in a state gaming area at approximately 4:00 a.m. It was unusual for a vehicle to be parked in that location at that time without any occupants. An officer attempted to ascertain ownership through the vehicle identification number because there was no license plate, only a temporary permit in the window. The officer obtained entry to the vehicle through an open window. He discovered a note that appeared to be a "suicide" note or "last will and testament." The officer called for backup at that time. The notes were returned to "substantially" the same location from which they were found. The officer then found a wallet on the seat containing a permit identifying defendant. The officer was instructed to wait until a tracking dog could be dispatched to that location. The tracking team located defendant approximately 100 to 200 yards from the vehicle and a knife a short distance from defendant. The notes were seized by a second officer prior to the execution of a search warrant for the vehicle. The vehicle was impounded before the execution of the search warrant. Although defendant initially indicated that he would not speak to officers when given his advice of rights form, he changed his answer, initialed the form, and spoke to police.

The prosecutor alleges that the trial court erred in granting suppression of the notes found in the vehicle because it was properly searched pursuant to the community caretaking, plain view, and automobile exceptions to the warrant requirement.² A trial court's ruling regarding a motion to suppress will be sustained unless its determination is clearly erroneous. *People v Burrell*, 417 Mich 439, 448; 339 NW2d 403 (1983). Clear error occurs when the reviewing court is left with a definite and firm conviction that a mistake has been made. *Id.* at 449. When reviewing the trial court's factual determinations, deference must be given to the trial court's assessment of the witnesses' credibility. *Id.* at 448-449. The trial court's legal findings are reviewed de novo, and factual findings are reviewed for clear error. *People v Eaton*, 241 Mich App 459, 461; 617 NW2d 363 (2000).

Both federal and state constitutions protect individuals from unreasonable searches. US Const, Am IV; Const 1963, art 1, § 11. A search conducted without a properly authorized warrant is unreasonable unless it falls within one of the recognized exceptions to the warrant requirement. *People v Davis*, 442 Mich 1, 10; 497 NW2d 910 (1993). It is undisputed that the police intrusion into the interior of defendant's car was not conducted pursuant to a search warrant. The community caretaker exception was recognized by the United States Supreme Court in *Cady v Dombrowski*, 413 US 433; 93 S Ct 2523; 37 L Ed 2d 706 (1973), and by our Supreme Court in *City of Troy v Ohlinger*, 438 Mich 477; 475 NW2d 54 (1991). Essentially, this exception describes police conduct that relates to the usual activities that police perform in carrying out their responsibility to protect the community. In contrast to the probable cause requirement that traditionally applies to searches for evidence, "when the police are performing 'caretaking' functions, they are usually not searching for anything." *Davis, supra* at 12. "[T]he

² The prosecutor also alleges that the search was justified because defendant had abandoned the vehicle. We cannot conclude that the trial court's factual determination regarding abandonment was clearly erroneous. *People v Eaton*, 241 Mich App 459, 461; 617 NW2d 363 (2000). Furthermore, because of our conclusion that the seizure of the notes was proper under several exceptions to the warrant requirement, we need not address the prosecutor's contention that the evidence was admissible pursuant to the inevitable discovery rule.

defining characteristic of community caretaking functions is that they are totally unrelated to the criminal investigation duties of the police.” *Id.* at 22.

The trial court correctly concluded that the deputy who initially entered defendant’s car was properly carrying out his community caretaker function when he entered the vehicle to locate some proof of ownership and briefly examined an envelope with writing on it. Because the item examined was an envelope, it might have given the deputy some information, such as a name and address of the owner of the vehicle. Once he realized that the first envelope simply contained a written note – a last will and testament – he put both envelopes back on the seat and proceeded to examine a wallet. This indicates that the deputy was not conducting a criminal investigation, but rather was simply trying to determine the vehicle’s owner – a proper community caretaking function.

The trial court further correctly ruled that the community caretaking exception would not justify a latter officer’s entry into the vehicle because the owner of the vehicle had already been identified and this officer was clearly engaged in a criminal investigation. However, the trial court failed to consider whether another exception to the search warrant requirement was applicable to justify the seizure. We conclude that the second officer was permitted to enter the vehicle to seize the envelopes because of the plain view and automobile exceptions to the warrant requirement.

A police officer is permitted to seize evidence without a warrant when, while in a place where he has a right to be, he observes in plain view an item that is immediately apparent as evidence or contraband. *People v Champion*, 452 Mich 92, 101; 549 NW2d 849 (1996). As our Supreme Court explained in *Champion, supra* at 102, citing *Texas v Brown*, 460 US 730, 741-742; 103 S Ct 1535; 75 L Ed 2d 502 (1983), the phrase “‘immediately apparent’ means that without further search the officers have ‘probable cause to believe’ the items are seizable.” In this case, the second officer had a right to be outside defendant’s vehicle and the envelopes were in plain view when he observed them through the window.³ He testified that he could see the victim’s first name written on the envelopes, and he was apparently informed by the deputy, or was able to observe for himself, that one of the envelopes appeared to be a suicide note or a last will and testament. Combined with the officer’s knowledge of the relationship between defendant and the victim, and all the other evidence he possessed at that time, there was probable cause to conclude that the envelopes were evidence related to the criminal assault.

³ Defendant suggests that the deputy purposely replaced the envelopes in a manner that would permit them to be read by another officer standing outside the vehicle. This supposition is unsupported by the record. The deputy stated that he “threw” the envelopes back on the seat in substantially the same position from which he retrieved them. Because at that point he believed that the vehicle’s owner was possibly committing suicide, and he did not yet know that defendant owned the car or that he was suspected of beating his ex-girlfriend, it is both illogical and contrary to the record evidence to assume that he carefully replaced the envelopes in such a fashion that another officer would later be able to read them from outside the vehicle. The trial court rejected the defense argument that the first officer immediately correlated the vehicle to defendant based on a “BOL,” and we do not resolve credibility questions anew. *Burrell, supra*.

Furthermore, this evidence was inside a motor vehicle. Where a police officer has probable cause to believe that evidence or contraband is located in a motor vehicle, the mobility of the vehicle provides an exigent circumstance that permits the police to enter the vehicle and search for, and seize, any evidence or contraband that they discover. *United States v Ross*, 456 US 798, 820 n 26; 102 S Ct 2157; 72 L Ed 2d 572 (1982); *People v Taylor*, 454 Mich 580, 588; 564 NW2d 24 (1997), overruled in part on other grounds *People v Kazmierczak*, 461 Mich 411; 605 NW2d 667 (2000). Once probable cause to search a motor vehicle is established, there is no requirement that a separate exigency be shown; the rationale underlying the automobile exception – the mobility of the vehicle – provides the exigency. *Maryland v Dyson*, 527 US 465, 466-467; 119 S Ct 2013; 144 L Ed 2d 442 (1999). Therefore, once the officer was advised of the envelopes and viewed them himself through the car window, probable cause existed to believe that the envelopes were evidence connected to the criminal investigation. Because they were located inside a motor vehicle, the officer was permitted to enter the vehicle and seize the notes without first obtaining a search warrant.

In his cross-appeal, defendant alleges that, once he invoked his right to remain silent and his right to have counsel present during questioning, all police questioning had to cease. Therefore, the police engaged in impermissible custodial interrogation in violation of defendant's constitutional rights when they told defendant they would like to speak with him to get his side of the story, but could not because defendant had not waived his rights. We disagree. Before conducting a custodial interrogation, the police are required to inform the subject of his constitutional rights to counsel, to remain silent, and to have counsel present during the interrogation. *Miranda v Arizona*, 384 US 436, 479; 86 S Ct 1602; 16 L Ed 2d 694 (1966). If the subject invokes his right to remain silent, questioning must cease, and if he requests the presence of counsel, the questioning must cease until counsel is provided; he may not be subjected to further custodial interrogation until counsel is made available unless he initiates further communication with the police. *Edwards v Arizona*, 451 US 477, 484-485; 101 S Ct 1880; 68 L Ed 2d 378 (1981); *People v Paintman*, 412 Mich 518, 525; 315 NW2d 418 (1982). “[A] valid waiver . . . cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights.” *Edwards, supra* at 484; *Paintman, supra* at 526. Thus, absent a valid waiver, or reinitiation of contact by the subject, the police may not engage in custodial *interrogation*, which has been defined as express questioning or its functional equivalent. *Rhode Island v Innis*, 446 US 291, 300-301; 100 S Ct 1682; 64 L Ed 2d 297 (1980). The “functional equivalent of interrogation” is defined as “any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the subject.” *Id.* at 301.

In *People v Kowalski*, 230 Mich App 464, 483-484; 584 NW2d 613 (1998), this Court, relying on its prior decision in *People v McQuaig*, 126 Mich App 754; 338 NW2d 4 (1983), held that informing a defendant that his co-defendant had made a statement and inquiring whether the defendant still wanted to speak with an attorney did not constitute custodial interrogation and, therefore, did not violate the *Edwards/Paintman* rule. Similarly, in *McQuaig, supra* at 759, after the defendant invoked his rights to remain silent and to speak to an attorney, the police informed the defendant of the nature of the charges against him and also described the circumstances that led the police to believe the defendant was the responsible offender. The defendant thereupon stated that the officer had been fair with him and he had changed his mind and wished to make a

statement. *Id.* The defendant then signed a waiver of rights form and gave a statement to the police. *Id.* This Court held that the police officer's statements could not be characterized as further interrogation or its functional equivalent. *Id.* at 760.

This Court's decisions in *Kowalski* and *McQuaig* provide the proper basis for the resolution of defendant's claim, and defendant's attempt to distinguish *Kowalski*, by noting that it concerned a pre-*Edwards* factual situation, is without merit. In this case, when defendant invoked his rights to silence and to have counsel present, the trial court held that the police did not engage in prohibited custodial interrogation or its functional equivalent. We cannot conclude that this factual finding, in part based on the trial court's assessment of the credibility of the witnesses, was clearly erroneous. *Burrell, supra; Eaton, supra.* Defendant has failed to demonstrate that the trial court clearly erred in determining that he voluntarily and intelligently waived his rights to remain silent and to have an attorney present during questioning.

Lastly, defendant alleges that the police lacked probable cause to arrest him and the evidence that flowed from that illegal arrest must be suppressed. We disagree. A police officer may arrest a person for a felony offense without a warrant provided that a felony offense has been committed and the officer has reasonable cause to believe that the defendant committed it. MCL 764.15(c); *People v Oliver*, 417 Mich 366, 374; 338 NW2d 167 (1983). The officer's determination is reviewed to "determine whether the facts available to the officer at the moment of arrest would justify a fair-minded person of average intelligence in believing that the suspected person had committed a felony. Each case must be analyzed in light of the particular facts confronting the arresting officer." *Id.* at 374, quoting *People v Summers*, 407 Mich 432, 442; 286 NW2d 226 (1979), rev'd on other grounds sub nom *Michigan v Summers*, 452 US 692; 101 S Ct 2587; 69 L Ed 2d 340 (1981). This analysis is made from the standpoint of a man of reasonable prudence and caution, not a legal scholar. *People v Harper*, 365 Mich 494, 501; 113 NW2d 808 (1962). The United States Supreme Court, in *Brinegar v United States*, 338 US 160, 175; 69 S Ct 1302; 93 L Ed 1879 (1949), explained:

In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. The standard of proof is accordingly correlative to what must be proved.

In this case, there is no dispute that a felony offense was committed. The dispute concerned whether there was probable cause to believe defendant committed the offense.

Considered from the viewpoint of an experienced and reasonably prudent police officer, the facts suggested a number of reasonable conclusions that, taken together, amounted to probable cause. There was a reasonable likelihood that whoever beat the victim also made the 911 call because the assailant would be aware of the fact that the apartment door was open and that a severely injured woman was present in the apartment. The fact that the door was open and there was no evidence of a forced entry suggested that the assailant was someone known to the victim. Additional facts suggested that defendant placed the 911 call, but tried to hide his identity: (1) the 911 call was made from a nearby party store; (2) defendant was seen at that store shortly before the call was made; (3) the caller knew particular information about the victim's condition; and (4) the caller gave a false name. The strained relationship between the

couple and the victim's attempt to end the relationship also supported the probability that defendant was the assailant. A police officer with nearly thirty years of experience would immediately recognize that male spouses or boyfriends are often the perpetrators of violence against their female companions. This reality was supported by the information given by the victim's daughter that the couple continued to see each other, but the victim wished to end the relationship. The evidence was sufficient to justify a reasonable and prudent individual in concluding that defendant committed the brutal, and ultimately fatal, assault. *Oliver, supra.*⁴

We reverse the trial court's suppression of the notes taken from defendant's car, but affirm the trial court's denial of defendant's motion to suppress his statements to the police and to quash his arrest.

Affirmed in part, reversed in part, and remanded for further proceedings. We do not retain jurisdiction.

/s/ Hilda R. Gage
/s/ Kurtis T. Wilder
/s/ Karen M. Fort Hood

⁴ Having concluded that the trial court erred in suppressing the notes found in defendant's vehicle, the content of the notes further support a showing of probable cause.