STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

SAUREZ CARTER,

Defendant-Appellee.

UNPUBLISHED
March 24, 2000

No. 217038
Wayne Circuit Court
Criminal Division
LC No. 98-008461

Before: Griffin, P.J., and Holbrook, Jr., and J. B. Sullivan*, JJ.

PER CURIAM.

The prosecutor appeals as of right a trial court order granting defendant's motion to suppress evidence and dismissing the case. We reverse in part and vacate in part and remand for further proceedings.

Defendant was charged with carrying a concealed weapon in a motor vehicle, MCL 750.227; MSA 28.424. At a hearing on defendant's motion to suppress evidence, testimony established that police officers observed a car carrying defendant and another man change several lanes without signaling. The officers followed the car into a store parking lot. Defendant and the driver exited the car and entered the store. An officer looked into the car from the passenger side window and observed that the ignition was broken and the air bags were missing. Defendant and the driver were detained when they could not produce ownership documents for the car. The officer reached into the car, unlocked the door, and conducted a search. He discovered a loaded handgun in the glove compartment. The gun belonged to defendant. Eventually, a LEIN check revealed that the car was not stolen.

The trial court granted defendant's motion to suppress the evidence and dismissed the case. The trial court agreed with the prosecutor's assertion that defendant had no standing to challenge the search; nevertheless, the court granted the motion on the ground that the police had lacked probable cause to arrest defendant.

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

We review a trial court's findings of fact on a motion to suppress evidence for clear error and the ultimate decision de novo. *People v Darwich*, 226 Mich App 635, 637; 575 NW2d 44 (1997).

We reverse the trial court's decision in part, vacate it in part, and remand for further proceedings. Initially, we reverse the trial court's finding that the police did not have probable cause to arrest defendant. To be constitutionally valid, an arrest must be made on probable cause existing at the time of arrest. Probable cause is established by a showing of probability or substantial chance of criminal activity. *People v Lyon*, 227 Mich App 599, 611; 577 NW2d 124 (1998). The condition of the car, as well as the occupants' inability to produce ownership documents, gave the police probable cause to conclude that at a minimum defendant and the driver were in possession of stolen property. The warrantless arrest satisfied constitutional standards, and the trial court erred in granting defendant's motion to suppress the evidence on the ground that defendant's arrest was invalid.

We vacate the trial court's holding that defendant lacked standing to challenge the search. A person has standing to challenge a search or seizure only if, under the totality of the circumstances, the person had a subjective expectation of privacy in the object of the search or seizure and the expectation was one which society is prepared to recognize as reasonable. The defendant bears the burden of establishing standing. *People v Zahn*, 234 Mich App 438, 446; 594 NW2d 120 (1999). In the instant case, the issue was not properly presented below, and the trial court stated no reasons for its conclusion that defendant lacked standing. We have no basis on which to review the trial court's ruling. We direct that on remand the issue be fully briefed and argued before the trial court. We express no opinion on this issue.

If on remand the issue of standing is decided in defendant's favor, the trial court must then determine if the search of the car was proper as either a search incident to arrest, *People v Bullock*, 440 Mich 15, 26; 485 NW2d 866 (1992), reh den sub nom *People v Hasson*, 440 Mich 1203; 486 NW2d 744 (1992); *People v Fernengel*, 216 Mich App 420, 424; 549 NW2d 361 (1996), or as an inventory search. *People v Houstina*, 216 Mich App 70, 77; 549 NW2d 11 (1996).

Reversed in part, vacated in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard Allen Griffin
/s/ Donald E. Holbrook, Jr.
/s/ Joseph B. Sullivan