

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant/Cross-Appellee,

v

NINETY-SIX THOUSAND FIVE HUNDRED
DOLLARS IN UNITED STATES CURRENCY,

Defendant,

and

DEON RHIMES,

Claimant-Appellee/Cross-Appellant.

UNPUBLISHED
February 15, 2002

No. 224761
Berrien Circuit Court
LC No. 97-001582-CF

Before: Gage, P.J., and Jansen and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals by leave granted and claimant cross appeals from the trial court's order granting claimant's motion to suppress evidence in this civil forfeiture case. We affirm in part, reverse in part, and remand for further proceedings.

The incident in this case occurred on May 10, 1997, on I-94 in Berrien County. At approximately 5:00 p.m., Charles Heit, then employed full time for the Berrien County Sheriff's Department and part time for the Baroda Lake Township Police Department, and James Mitschelen, a reserve officer with the Berrien County Sheriff's Department,¹ were on stationary patrol in the median of I-94 in a marked Baroda Lake Township police vehicle. While utilizing a radar gun, Heit measured a white vehicle (later identified as a Pontiac Grand Prix) traveling at 93 miles an hour. Heit, the driver of the patrol vehicle, left the median to stop the speeding vehicle and the Grand Prix pulled onto the shoulder of the freeway without incident. Heit approached the driver's side of the Grand Prix while Mitschelen approached the passenger's side. Heit

¹ More specifically, Mitschelen is a drug dog handler at the Cook Nuclear Plant in Bridgman. Although this is a full-time civilian job, part of this job is to be available to the narcotics unit for the Berrien County Sheriff's Department.

noticed two people inside the vehicle and asked the driver for his driver's license, registration, and proof of insurance.

Heit testified² that as he waited for the driver, Deon Rhimes, to retrieve the requested documents, Heit asked Rhimes if there was anything in the vehicle such as weapons, drugs, or bombs. In this regard, Heit claimed that he very often asked people during traffic stops if there was anything illegal in the vehicle such as drugs, bombs, or weapons. Rhimes responded that there were not. Heit then asked if he could search the vehicle, and, according to Heit, Rhimes stated that he did not mind. Heit recalled that he was then given a driver's license, but did not independently recall if he was given a registration or proof of insurance. Rhimes and his passenger, Terry Lynn Smith, then exited the vehicle at the officers' request and stood at the rear of the Grand Prix with Mitschelen. Heit patted down Rhimes before searching the vehicle, but found no weapons on Rhimes. Heit also indicated that Rhimes appeared to be somewhat nervous, but no more than when anyone is stopped for a traffic offense.

Heit first searched the passenger's side, the driver's side, and then the back seat of the vehicle. Heit stated that the search lasted two to five minutes and he did not find anything illegal in the vehicle. Heit then asked Rhimes how to open the trunk and Rhimes indicated that a key was needed. According to Heit, Rhimes then opened the trunk with his key. Heit had Rhimes stand away from the trunk and Heit saw two plastic bags (the type that fit over a shoe box) in the trunk. Heit opened one bag, which had a compact disc on top, and when he moved the disc, he saw a large amount of United States currency. Heit opened the second bag and also saw a large amount of currency in it. Heit asked Rhimes what the money was from and Rhimes responded that he had just sold a vehicle. Heit asked for a bill of sale, but Rhimes stated that he did not have one. Heit remarked that there appeared to be a great deal more money than from the sale of a vehicle and Rhimes responded that some of the money was from gambling.

Rhimes was placed in the back of the police vehicle. Although the back doors of the police vehicle automatically locked and there was a partition between the front and back seats so that Rhimes could not exit the vehicle, Rhimes was not handcuffed and was told that he was not under arrest. Heit then asked Smith about the money and Smith responded that he was not aware of it. Heit again interviewed Rhimes, who was in the back of the police vehicle, and Rhimes indicated that the gambling to which he had referred was not in a casino, but on Chicago Bulls basketball games and on drag racing. Rhimes did not say where the gambling occurred. Rhimes also stated that he received \$15,800 from the sale of a vehicle.

After this interview with Rhimes, Heit called Lieutenant Greer of the Sheriff's Department and requested a drug dog, who was at Mitschelen's house. Approximately ten to fifteen minutes after the call, the dog was brought to the scene by Police Officer Shane Daniels. Heit stated that he told Rhimes that a drug dog was coming and Rhimes indicated that he did not have a problem with that because there were no drugs in the vehicle.

² We note that the suppression hearing occurred on September 23, 1999. All facts in this opinion are from the hearing. Plaintiff has improperly relied on testimony given by Heit at a deposition in its appellate brief, and this evidence was not considered by the trial court in its findings. We, too, will not consider the deposition testimony in this opinion.

While waiting for the drug dog to arrive, Heit began to write the traffic citation for Rhimes. He ran Rhimes' and Smith's names through the Law Enforcement Information Network (LEIN), which showed that Rhimes had no outstanding warrants and a valid driver's license. The LEIN, however, showed that Smith had an outstanding warrant for failure to pay child support. Heit believed that the LEIN information came back before the drug dog arrived and Smith was ultimately taken to the Berrien County Jail by another State Trooper.

When the drug dog arrived, Mitschelen, a certified drug dog handler, walked the dog around the vehicle. The dog searched the outside of the vehicle and indicated on the front wheel wells. The dog also searched the inside of the vehicle, but did not indicate. When the dog searched the trunk, it indicated on the bags of money and one of the rear wheel wells. Although the vehicle was impounded, it is undisputed that no drugs were ever found in the vehicle or on Rhimes.

Mitschelen's version of events was very similar to Heit's version. Heit was operating the radar gun in the patrol vehicle. Mitschelen saw the white Grand Prix "passing everything on the road," and they pursued it for speeding. The Grand Prix pulled over to the shoulder and Mitschelen approached the passenger side. Mitschelen did not hear any conversations between Heit and Rhimes until Heit asked about opening the trunk. Heit asked if there was a button to open the trunk, and Rhimes walked up and opened the trunk. Heit searched the trunk and picked up a bag and asked what was in it. Rhimes responded that there was money in it, Heit asked how much, and Rhimes said "around ninety some thousand." Other than handling the drug dog, Mitschelen testified that it was his job to position himself to watch the passenger in the vehicle while Heit talked to the driver or searched the vehicle.

Deon Rhimes also testified at the hearing and gave a very different version of events. He was driving a 1990 Pontiac Grand Prix owned by his girlfriend, Angela Boone. He was stopped by the police for speeding and asked for his identification, registration, and insurance. Rhimes gave the requested documents to Heit and Rhimes told Heit that the vehicle belonged to his girlfriend. Heit then asked if there were any drugs or weapons in the vehicle and Rhimes responded that there were not. Heit asked Rhimes why he was speeding, and Rhimes responded that he was not speeding. Heit again asked if there were any drugs or weapons in the vehicle and Rhimes responded, "No." Heit then told Rhimes to get out of the vehicle and stand behind it. Heit said he was then going to search the vehicle and Rhimes claimed that Heit never asked if he could search the vehicle. Heit asked, "Will I find anything in this vehicle?" and Rhimes again responded, "No."

Rhimes and Smith stood at the rear of the vehicle while Heit searched it for about ten to fifteen minutes. Heit then asked Rhimes about the trunk key and Rhimes stated that he did not have a trunk key. Heit returned to the inside of the vehicle, opened the arm rest, and then opened the trunk because there is a button under the arm rest that opens the trunk. Heit searched the trunk while Rhimes and Smith remained with Mitschelen. When Heit picked up the plastic bags containing the money, Rhimes initially told him that the money was from his asphalt business. Rhimes denied telling Heit that he received \$15,900 for selling a vehicle and he denied telling Heit that part of the money was from gambling. Rhimes specifically denied that he told Heit that the money was from gambling on drag racing or Chicago Bulls basketball games.

Rhimes denied that he ever consented to the search of the vehicle or of the trunk. After Heit found the money, he placed Rhimes in the rear of the patrol vehicle and Rhimes asked if he was under arrest. Heit responded, "You know why." Rhimes testified that he asked at least twice if he could talk to his lawyer. Rhimes believed that they were on the freeway for about one hour before he was taken to the police station. Heit similarly testified that about one hour and fifteen minutes elapsed from the time of the initial stop to taking the vehicle to the Berrien County Sheriff's Department. Rhimes stated that he did not receive the traffic ticket until he arrived at the police station and that his statements about receiving the money from gambling occurred at the police station and were given to another police officer. It is undisputed that Rhimes has never been charged with any crime arising out of this incident. Instead, the prosecution seeks civil forfeiture of the money found in the trunk, alleging gambling and drug violations.

Rhimes moved to suppress the evidence, challenging the search of the vehicle and seizure of the money under the Fourth Amendment. The trial court, in a written opinion, initially found that there was probable cause for the traffic stop because the vehicle was timed at about twenty-three miles an hour over the speed limit. The trial court further found that this entitled the investigating officer to make a routine inquiry. More importantly, the trial court also found that Rhimes voluntarily consented to the search of the trunk and that Rhimes voluntarily opened the trunk for the officer's inspection. The trial court, however, went on to find that the continued detention of Rhimes after Heit found the money in the plastic bags was a seizure and was unconstitutional because the police officers lacked reasonable cause to continue the detention. Ultimately, the trial court held that the evidence obtained from the drug dog's search of the currency and any statements obtained during Rhimes' detention had to be suppressed.

The prosecution appeals as of right, challenging the trial court's suppression of the evidence. Claimant Rhimes cross appeals, challenging the trial court's ruling that he consented to the search of the vehicle. A trial court's ruling regarding a motion to suppress is reviewed for clear error. *People v Stevens (After Remand)*, 460 Mich 626, 631; 597 NW2d 53 (1999). A trial court's factual findings at a suppression hearing will not be reversed unless they are clearly erroneous. *People v Oliver*, 464 Mich 184, 191; 627 NW2d 297 (2001). The application of constitutional standards by the trial court is not, however, entitled to the same deference as factual findings. *Stevens, supra*, p 631. Rather, questions of law are reviewed de novo. *Id.*

We first address claimant's challenge of the trial court's finding that he consented to the search of the vehicle. "Searches and seizures conducted without a warrant are unreasonable per se, subject to several specifically established and well-delineated exceptions." *People v Borchard-Ruhland*, 460 Mich 278, 293-294; 597 NW2d 1 (1999). One established exception to the probable cause and warrant requirements is a search conducted pursuant to consent. *Id.*, p 294. "Whether consent to search is freely and voluntarily given is a question of fact based on an assessment of the totality of the circumstances." *Id.*; see also, *Ohio v Robinette*, 519 US 33, 40; 117 S Ct 417; 136 L Ed 2d (1996).

The trial court's finding that Rhimes consented to the search of the vehicle, including the trunk, is not clearly erroneous because it is supported by the testimony of Heit and Mitschelen.

Specifically, Heit testified that he asked Rhimes if he could search the vehicle and Rhimes stated that he did not mind.³ Heit stated that he did not have his gun drawn, that he did not raise his voice, and that he made no threats. Heit searched the passenger side, driver's side, and back seat of the vehicle and did not find anything illegal. Heit then asked Rhimes how to open the trunk and, according to Heit, Rhimes then opened the trunk with a key. This testimony was corroborated by Mitschelen, who testified that Heit asked Rhimes if there was a button to open the trunk. Rhimes then walked to the trunk and opened it. Rhimes, of course, disputed that he consented to the search of the vehicle or the trunk. However, this conflicting evidence presented a credibility issue for the trial court to resolve.

Under these circumstances, we cannot conclude that the trial court's factual finding that Rhimes consented to the search of the vehicle is clearly erroneous because the conflicting evidence presented a credibility issue for the trial court to resolve. *People v Farrow*, 461 Mich 202, 208-209; 600 NW2d 634 (1999). Moreover, we reject claimant's contention that detention by a police officer who retains a driver's license, insurance, and registration is such a coercive environment that it vitiates consent as a matter of law. This exact argument was rejected in *People v Acoff*, 220 Mich App 396, 399-400; 559 NW2d 103 (1996), where, under very similar facts as the present case, this Court stated that investigative stops are not inherently coercive in nature. Consequently, the trial court's finding that Rhimes consented to the search of the vehicle will not be set aside. Because the search of the vehicle was not unconstitutional, the money found as a result of the search need not be suppressed as evidence.

The trial court next analyzed whether the further detention of Rhimes, after the money was found in the trunk, was reasonable. The import of this question relates to the evidence obtained by the drug dog's search and Rhimes' statements to Heit because the trial court suppressed this evidence based on a finding that the police lacked reasonable suspicion to detain Rhimes after the money was found in the trunk. The trial court found as a fact that, from the time that Heit found the money in the trunk, Rhimes was not free to leave and was thus seized within the meaning of the Fourth Amendment. A seizure, in the constitutional sense, occurs if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave. *People v Frohriep*, 247 Mich App 692, 700; ___ NW2d ___ (2001). We will not set aside the trial court's finding that Rhimes was seized within the meaning of the Fourth Amendment because there is evidence to support this finding. Heit testified that after he found the money and asked Rhimes where the money was from, he placed Rhimes in the back seat of the patrol vehicle. Once the doors were closed, they automatically locked and there is a wire partition between the front and back seats so that the backseat passenger cannot exit the vehicle. Mitschelen similarly testified that Rhimes was placed in the patrol vehicle, although he could not recall exactly when that occurred. Mitschelen also stated

³ We note that once a police officer makes a valid traffic stop, as here, the officer may detain the motorist while a computerized check of the driver's license and registration is run and a citation or warning is written. *People v Davis*, ___ Mich App ___; ___ NW2d ___ (Docket No. 220087, issued 12/11/2001), slip op, pp 5-6; *United States v \$404,905 in United States Currency*, 182 F3d 643, 647 (CA 8, 1999). Further, during this process, the officer may ask the motorist routine questions concerning destination, the purpose of the trip, whether the vehicle may be searched, and the officer may act on whatever information is volunteered. *Id.*, p 647.

that the back doors automatically lock in the patrol vehicle and there is a partition between the front and back seats. Rhimes testified that he was placed in the back seat of the patrol vehicle after the money was found and he remained in the patrol vehicle while they waited for the drug dog to arrive. Under these circumstances, the trial court did not clearly err in concluding that Rhimes was seized after Heit found the money in the trunk because a reasonable person would not believe that he was free to leave a locked police patrol vehicle.

Although Rhimes was seized for purposes of the Fourth Amendment, we must next consider whether that seizure was unreasonable. This issue is controlled by the Supreme Court's decision in *People v Burrell*, 417 Mich 439; 339 NW2d 403 (1983). In *Burrell, supra*, p 441, the Court held that "a person may not be detained for roadside questioning beyond the scope of a stop, absent at least an articulable basis for suspecting other criminal activity." More specifically, the Court stated:

Proceeding from the premise that a brief detention is at least as intrusive for Fourth Amendment purposes as a stop, we conclude that a brief detention for questioning is permissible if based on a reasonable and articulable suspicion of criminal activity. [*Id.*, pp 456-457.]

The reasonableness of a police officer's suspicion is to be determined on a case-by-case basis under the totality of all the facts and circumstances. *Oliver, supra*, p 192, quoting *People v LoCicero (After Remand)*, 453 Mich 496, 501; 556 NW2d 498 (1996). In determining whether the officer acted reasonably in such circumstances, due weight must be given to the specific reasonable inferences which the officer is entitled to draw from the facts in light of the officer's experience, but not on inchoate and unparticularized suspicions or hunches. *Id.* Further, although fewer facts are needed to establish reasonable suspicion when a person is in a moving vehicle rather than in a house, some minimum threshold of reasonable suspicion must be established to justify an investigatory stop whether a person is in a vehicle or on the street. *Id.*

We find that the trial court erred in suppressing the evidence obtained by the drug dog and the statements made by Rhimes to Heit concerning the source of the money. We find that, under the totality of all the facts and circumstances known to the police officer, there was reasonable suspicion to detain Rhimes and obtain the drug dog for a more thorough search of the vehicle. In the present case, the facts known to Heit at the time that he decided to further detain Rhimes and bring in a drug dog to sniff the vehicle included the following. Rhimes was driving a vehicle registered in his girlfriend's name and was speeding in excess of twenty miles an hour over the speed limit when he was pulled over. When asked, Rhimes stated that there were no drugs, weapons, or bombs in the vehicle. Rhimes and Smith were frisked and no weapon was found on them. Rhimes consented to a search of the vehicle and Heit found nothing illegal in the vehicle, although there were "a couple of" cellular telephones and pagers in the vehicle. Heit then searched the trunk, after Rhimes opened it, and found two plastic bags containing a large amount of cash that was bundled together. We certainly acknowledge that having a large amount of cash is not illegal; however, carrying a large amount of cash in a bag is unusual. *In re Forfeiture of United States Currency*, 171 Mich App 684, 687; 431 NW2d 42 (1988). Upon finding the money, Heit asked Rhimes what the money was from and Rhimes responded that he had just sold a vehicle. Rhimes, however, stated that he did not have a bill of sale from the

vehicle. Further, when Heit remarked that there appeared to be a great deal more money than from the sale of a vehicle, Rhimes said that some of the money was also from gambling. It was at this point that Rhimes was placed in the back of the patrol vehicle.

We believe that these facts were sufficient to create an articulable and reasonable suspicion justifying the police officers' decision to detain Rhimes in the patrol vehicle and bring a drug dog to further investigate the vehicle. The trial court's reliance on *People v Martinez*, 187 Mich App 160, 170-171; 466 NW2d 380 (1991), remanded on other grounds 439 Mich 986 (1992), was somewhat misplaced inasmuch as that case held that taken separately, the currency found in a container in a vehicle would not establish *probable cause* to believe that other evidence or contraband could be found elsewhere in the vehicle. The present case does not require a finding of probable cause, a higher threshold than reasonable suspicion. *People v Rizzo*, 243 Mich App 151, 156; 622 NW2d 319 (2000). Rather, we follow *In re Forfeiture of United States Currency*, *supra*, p 687, where this Court held that the police officers' observation of a large sum of cash (\$6,300) in a brown paper bag with papers that could have been prescription forms provided an objective basis for the officers' suspicion that the claimants were involved in a drug deal. See also, *People v Garvin*, 235 Mich App 90, 103; 597 NW2d 194 (1999) (This Court noted that it is "highly peculiar" for a person to carry a large amount of cash, between \$2,200 and \$3,500, on one's person). Similarly, the federal courts have recognized that possession of a large amount of cash is strong evidence that the money is connected with drug trafficking. *United States v \$141,770 in United States Currency*, 157 F3d 600, 603 (CA 8, 1998); *United States v \$39,873*, 80 F3d 317, 319 (CA 8, 1996); *United States v \$67,220 in United States Currency*, 957 F2d 280, 285 (CA 6, 1992); *United States v Thomas*, 913 F2d 1111, 1115 (CA 4, 1990); *United States v \$215,300*, 882 F2d 417, 419 (CA 9, 1989). Thus, we conclude that under the totality of the circumstances, Rhimes' further detention and questioning were supported by a reasonable and articulable suspicion of illegal activity. *United States v Hunnicutt*, 135 F3d 1345, 1349 (CA 10, 1998).

In sum, we hold that the trial court's factual finding that Rhimes consented to the search of the vehicle, including the trunk, was not clearly erroneous. We also hold that the trial court erred in ruling that the police lacked any reasonable basis for the continued detention because we find that the police had a reasonable and articulable suspicion of illegal activity to justify Rhimes' further detention and questioning. Consequently, we reverse the trial court's order suppressing evidence of the drug dog's search and Rhimes' statements to the police.

Affirmed in part, reversed in part, and remanded for further proceedings. Jurisdiction is not retained.

/s/ Hilda R. Gage
/s/ Kathleen Jansen
/s/ Peter D. O'Connell