COURT OF APPEALS
DECISION
DATED AND RELEASED

AUGUST 1, 1995

No. 95-0178-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

BRADLEY W. SEXTON,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Oconto County: LARRY L. JESKE, Judge. *Affirmed*.

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Bradley Sexton appeals a judgment convicting him of burglary. He argues that tools discovered by police while searching his car and later seized from his home should have been suppressed. He also argues that oral and written statements should be suppressed as fruits of the invalid car search and that the written statement was inadmissible because it was not preceded by a ***Miranda*** warning. Because we conclude that the search

was authorized by probable cause and the statement properly obtained when it admitted the tools and statements, we affirm the judgment.

On the evening of Sexton's initial arrest, a citizen telephoned the police with a description of a suspicious car. The citizen saw the car backing up and going forward without its lights. The citizen was suspicious because he lived in a remote area and his neighbor had been burglarized the previous week. He also observed that the vehicle had no license plates. Officer Kadlec arrived at the scene and observed a vehicle matching this description. When he turned around to follow the vehicle, it accelerated rapidly and failed to stop immediately when the officer pursued it with his lights flashing.

When Sexton finally stopped the car, Kadlec shined his flashlight into the car while talking to Sexton. He observed a television set, a ski mask, a large grey toolbox, two gas cans with a syphon hose, and other small articles in the hatchback compartment. Kadlec arrested Sexton for several traffic offenses and impounded the car. The following morning, Kadlec searched the car, making a list of some of its contents. He also took photographs of all of the objects that were in plain sight in the car and some of the objects from the toolbox. Sexton argues that this list of items and the photographs are the result of an illegal search of the vehicle and must be suppressed.

We uphold the search of the car because it was justified by probable cause.[1] A search conducted without a warrant is presumed unreasonable unless it is justified by one of the narrowly drawn exceptions to the warrant requirement. ***Katz v. United States***, 389 U.S. 347, 357 (1967). The "automobile exception" allows a warrantless search and seizure of a car so long as the search is justified by probable cause. *See* ***State v. Tompkins***, 144 Wis.2d 116, 129-30, 423 N.W.2d 823, 829 (1988). This exception recognizes the inherently mobile nature of autos and the decreased expectation of privacy in an auto. ***Id***. Kadlec's belief that he did not have probable cause to search the

[1] The trial court approved this search as an inventory search. Because we uphold the search on other grounds, we need not address the merits of the trial court's inventory search ruling. It is well established that if the trial court reaches the proper result for a different reason, its decision will be affirmed. *See* ***State v. Holt***, 128 Wis.2d 110, 124, 382 N.W.2d 679, 687 (Ct. App. 1985).

vehicle is not dispositive. The standard for probable cause is objective. ***State v. Drogsvold***, 104 Wis.2d 247, 255, 311 N.W.2d 243, 247 (Ct. App. 1989).

Kadlec had probable cause to search the vehicle because he had sufficient facts to excite an honest belief in a reasonable mind that the tools were linked to a crime. *See* ***State v. Jones***, 142 Wis.2d 570, 574, 419 N.W.2d 263, 264 (Ct. App. 1987). Recent incidents of burglary in the area and flight upon seeing an officer are legitimate factors in assessing probable cause. *See* ***State v. Grandberry***, 156 Wis.2d 218, 225, 456 N.W.2d 615, 618 (Ct. App. 1990); ***State v. Goebel***, 103 Wis.2d 203, 210-11, 307 N.W.2d 915, 918 (1981). The suspicious nature of Sexton's driving, driving without lights, lack of a license plate, Sexton's rapid acceleration away from the officer, and failure to immediately stop, together with the nature of the items observed in the car constitute probable cause that the vehicle had been used in a burglary. Therefore, the trial court properly refused to suppress the list of items Kadlec observed and the photographs he took of these items.

Three days after the initial arrest, Kadlec again arrested Sexton for driving after suspension. At this time, Kadlec was aware that a burglary had occurred on the evening of Sexton's previous arrest in the area where Sexton had been seen driving. Kadlec was also aware that several items reported stolen were similar to items he had observed in Sexton's car on the previous evening. These items were no longer in the car and Kadlec asked Sexton where they were. Sexton responded that the toolbox was at his home. Sexton then told Kadlec that he wanted to go home to inform his brothers that he would be in jail and that he would show Kadlec the toolbox if he took him home. When they arrived at Sexton's home, Kadlec was invited to enter. When Kadlec walked in the door, he observed several tools that he recognized as having been in the toolbox when he conducted the search of the car. These items had been identified by the true owners from pictures Kadlec took when he searched the car. Kadlec seized the tools.

Sexton argues that the oral statement regarding the location of the tools and the tools seized from his home must be suppressed as fruit of the illegal search of his vehicle. Because we conclude that the search of the vehicle was proper, there is no basis for suppressing the statement or the tools.

After seizing the tools from Sexton's home, Kadlec took Sexton to the county jail for booking on the traffic offense. Sexton asked the jailer for a piece of paper because he wanted to write a statement. The jailer gave him a piece of yellow paper from a pad, but Sexton declined to accept it because he wanted "statement paper." Kadlec then got Sexton a form used by his department for taking statements and Sexton wrote out a statement:

> On 10-30-93 I was arrested on traffic charges. At that time there were some tools in the back of the car. On 11-02-93 I was stopped again and asked about the stolen tools. I am pleading no contest to stealing the tools as not to waste the counties (sic) time or mine! That's all I have to say. B.S.

The trial court found that this statement was voluntary and not the result of police interrogation. This finding of fact is not clearly erroneous. *See* § 805.17(2), STATS. Therefore, the officer's failure to advise Sexton of his ***Miranda*** rights provides no basis for relief. *See* ***State v. Hockings***, 86 Wis.2d 709, 719-20, 273 N.W.2d 339 343 (1979).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.