STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 16, 2008
v	No. 277852 Monroe Circuit Court
IRA STEPHEN MCCOY, Defendant-Appellant.	LC No. 06-035638-FH

Before: Murray, P.J., and Whitbeck and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for possession with intent to deliver 1,000 or more grams of cocaine, MCL 333.7401(2)(a)(*i*), and possession of marijuana, MCL 333.7403(2)(d). Defendant was sentenced to 9 ½ to 15 years' imprisonment for possession with intent to deliver 1,000 or more grams of cocaine and 365 days in prison for the possession of marijuana conviction. We reverse and vacate.

This appeal arises out of a traffic stop, arrest and vehicle search, which occurred on I-75 in Erie, Michigan on September 8, 2006. Trooper Robert Prause was parked in the highway median, observing southbound traffic. Prause saw a Ford Expedition drive past and suspected the vehicle was in violation of MCL 257.709 by having (1) improperly tinted windows and (2) an ornament hanging four inches below the rear view mirror, which Prause believed served to obstruct the driver's vision. Prause pulled out behind the vehicle and turned on his overhead lights to effectuate the stop. While pulling the vehicle over, Prause observed that it had Washington, D.C. license plates.

When Prause approached the stopped vehicle, defendant was in the driver's seat and two other individuals were in the vehicle. Prause observed an air freshener hanging from the rear view mirror, which was approximately five inches by five inches in diameter. Defendant informed Prause that he was traveling to Alabama with his cousins. Prause requested defendant produce his driver's license. Defendant provided his driver's license and repeatedly attempted to show Prause his military identification card. Although Prause did not include this information in his report, he indicated that, while conversing with defendant, he detected the odor of marijuana emanating from the vehicle. When Prause ran defendant's driver's license through the law enforcement information network (LEIN), he learned that the license was suspended in Washington, D.C. and Michigan. Prause then arrested defendant for driving on a suspended license and requested assistance to search the vehicle.

Trooper Bradley Martin arrived, with his dog, at the scene. The dog alerted to the map light pocket, in an area above and to the right of the driver's seat. When questioned, defendant acknowledged that marijuana was present and a small "dime bag" was recovered. Prause examined suitcases belonging to defendant's passengers in the rear cargo area and noted that loose clothing was also piled in this area. Defendant acknowledged that the loose clothing in the cargo area belonged to him. When the clothing was moved aside, Prause noted three cellophane packages, later determined to contain one and three tenths kilograms of cocaine and pepper through the slots in a speaker cover. Subsequent to his arrest, defendant stated that the cocaine belonged to his cousins. In a later interview with police, defendant admitted being aware of the marijuana in the vehicle, but denied knowledge regarding the presence of the cocaine.

Before trial, defendant filed a motion to suppress the evidence obtained from the traffic stop, arguing the absence of a reasonable basis for the stop based on the provision contained in MCL 257.709(3)(d), which creates an exception for out-of-state drivers from enforcement of the statute. As a result, defendant asserted that once Prause observed defendant's license plate, he was precluded from initiating the traffic stop. The trial court rejected defendant's argument and denied the motion to suppress, ruling in relevant part:

> [T]he Michigan Legislature wanted to ensure that people operate motor vehicles safely on Michigan highways and if there's a vision obstruction the police do have the right to stop them, and they may not have the right to cite them for it.
>
> But even in this case I find that there's no authorization by law that Mr. McCoy has this object hanging from his mirror. The fact that the officer clearly indicates . . . throughout his testimony, that's the reason he initially stopped him . . . . And whether or not a trier of fact will believe that, that's another thing. But for purposes of determining a question of law, that officer says that's why I stopped him. And I would find that he has the right to do that.

The trial court further opined that the officer was also authorized to request defendant's identifying information after effectuating the traffic stop and to arrest defendant when the officer learned his license was suspended. The trial court determined that the search of the vehicle was based on a proper arrest of defendant for the suspended license "and, therefore, it was legal."

On appeal, defendant contends the trial court erred in denying his motion to suppress because MCL 257.709(1)(c) was not applicable to an out-of-state driver, rendering the traffic stop and any evidence obtained unlawful. Defendant further argues that the stop was not objectively reasonable because the officer failed to identify any specific and articulable facts, such as erratic driving by defendant, to suggest that the air freshener actually impeded defendant's vision.

We review a trial court's factual findings regarding a motion to suppress for clear error. *People v Davis*, 250 Mich App 357, 362; 649 NW2d 94 (2002). "[W]e review de novo the trial court's ultimate ruling on the motion to suppress." *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005). "A trial court's factual findings are clearly erroneous if, after review of the record, this Court is left with a definite and firm conviction that a mistake has been made." *People v Givens*, 227 Mich App 113, 119; 575 NW2d 84 (1997).

"In order to effectuate a valid traffic stop, a police officer must have an articulable and reasonable suspicion that a vehicle or one of its occupants is subject to seizure for a violation of law." *People v Williams*, 236 Mich App 610, 612; 601 NW2d 138 (1999) (footnote omitted). Accordingly, a police officer may effectuate a vehicle stop if probable cause exists to believe a traffic violation has occurred or is occurring. *Davis, supra* at 363. "The dispositive question, however, is not whether an actual violation occurred, but whether the officer had a reasonable suspicion that a violation may have occurred." *People v Fisher*, 463 Mich 881, 881-82; 617 NW2d 37 (2000) (Corrigan, J., concurring).

MCL 257.709 provides, in pertinent part:

> (1) A person shall not drive a motor vehicle with any of the following:
>
> (a) A sign, poster, nontransparent material, window application, reflective film, or nonreflective film upon or in the front windshield, the side windows immediately adjacent to the driver or front passenger, or the sidewings adjacent to and forward of the driver or front passenger.
>
> (b) A rear window or side window to the rear of the driver composed of, covered by, or treated with a material that creates a total solar reflectance of 35% or more in the visible light range, including a silver or gold reflective film.
>
> (c) A dangling ornament or other suspended object that obstructs the vision of the driver of the vehicle, except as authorized by law.
>
> * * *
>
> (3) This section shall not apply to:
>
> * * *
>
> (d) A vehicle registered in another state, territory, commonwealth of the United States, or another country or province.

Although it is undisputed that defendant had an object dangling from his rearview mirror that may have violated restrictions placed on Michigan vehicles, because the vehicle was registered in another state it was not subject to the restriction. MCL 257.709(3)(d). The officer acknowledged that he observed defendant's out-of-state plate while in the process of effectuating the traffic stop and does not assert that defendant violated any other traffic codes to substantiate the stop.

"[T]he reasonableness of a search or seizure depends on 'whether the officer's action was justified at its inception, and where it was reasonably related in scope to the circumstances which justified the interference in the first place.'" *Williams, supra* at 314, quoting *Terry v Ohio*, 392 US 1, 20; 88 S Ct 1868; 20 L Ed 2d 889 (1968) (footnote omitted). Based on the officer's observation of the out-of-state plates on the vehicle, and the fact that such vehicles are exempt from violation of the statute, the officer did not have reason to believe that defendant's vehicle was in violation of MCL 257.709 and, therefore, lacked probable cause or a reasonable suspicion

that a traffic violation had occurred, rendering the stop invalid. Further, based on the officer's failure to run a LEIN check before initiating the traffic stop, there existed no basis for the officer to believe that the displayed license plate was invalid or to assume that the vehicle was not properly registered. Because the stop was invalid, the officer was precluded from detaining defendant for validation of his license and registration and the evidence flowing from that seizure should have been suppressed by the trial court as "fruit of the poisonous tree." *People v Oliver*, 464 Mich 184, 207; 627 NW2d 297 (2001), citing *Wong Sun v United States*, 371 US 471; 83 S Ct 407; 9 L Ed 2d 441 (1963).

Based on our determination that the trial court erred in failing to suppress the evidence obtained from the unlawful stop, we need not address defendant's additional claims of error.

We reverse the trial court's denial of defendant's motion to suppress and vacate defendant's convictions and sentences.

/s/ Christopher M. Murray
/s/ William C. Whitbeck
/s/ Michael J. Talbot