

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PAUL BRIAN VANBIBBER,

Defendant-Appellant.

UNPUBLISHED

June 14, 2011

No. 297186

Oakland Circuit Court

LC No. 2006-206991-FH

Before: FORT HOOD, P.J., and DONOFRIO and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of operating while intoxicated (OWI), third offense, MCL 257.625, and driving with a suspended license (DWSL), second or subsequent offense, MCL 257.904(3). He was sentenced to 120 days in jail and 18 months of probation for both offenses. We reverse defendant's conviction for OWI and remand for a new trial, but affirm defendant's conviction for DWSL.

Defendant contends that his conviction must be reversed in light of *People v Feezel*, 486 Mich 184; 783 NW2d 67 (2010). The prosecutor concedes that the OWI conviction must be reversed in light of *Feezel*, but contends that *Feezel* was wrongly decided and should be reversed by the Supreme Court. Our role as an intermediate appellate court is limited, and we cannot disregard clear Supreme Court precedent. *Tait v Ross*, 37 Mich App 205, 207; 194 NW2d 554 (1971). Accordingly, the prosecutor must direct her argument to the Supreme Court.

Next, defendant contends that the trial court erred in denying his motion to suppress because Officer Switala presented conflicting evidence regarding lane straddling. We disagree. The trial court's findings of fact on a motion to suppress are reviewed for clear error, but the trial court's ultimate decision is reviewed de novo. *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005). "A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made." *People v Lanzo Constr Co*, 272 Mich App 470, 473; 726 NW2d 746 (2006).

"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). A traffic stop is permissible when an officer has probable cause to believe that a traffic violation has occurred or was occurring. *People v Davis*, 250 Mich App 357, 363-364; 649 NW2d 94 (2002). Therefore,

upon “reasonable grounds shown, a police officer may stop and inspect a motor vehicle for a equipment violation.” *Williams*, 236 Mich App at 612. Additionally, “[a] police officer who witnesses a civil infraction may stop and temporarily detain the offender for the purpose of issuing a written citation.” *People v Chapo*, 283 Mich App 360, 366; 770 NW2d 68 (2009). An actual violation of the vehicle code need not be proven. Rather, the officer’s *reasonable impression that a violation may have occurred is the dispositive question*. *People v Fisher*, 463 Mich 881, 882; 617 NW2d 37 (2000) (Corrigan, J.) A traffic violation or civil infraction provides sufficient cause to justify the stop of a vehicle. *People v Kazmierczak*, 461 Mich 411, 420 n 8; 605 NW2d 667 (2000). As a reviewing court, we may not substitute our judgment for that of the trial court, but must respect the trial court’s factual findings and issues involving credibility. *People v Rodney Williams*, 470 Mich 634, 641; 683 NW2d 597 (2004).

In the present case, there was an evidentiary hearing regarding the motion to suppress. Officer Switala testified that the videotape was not clear and that her visual observations were more accurate than the videotape. Indeed, defense counsel acknowledged on multiple occasions during the evidentiary hearing that the videotape clarity was poor. At the conclusion of the evidentiary hearing, the trial court expressly found that the officer’s testimony regarding lane straddling was credible, and there was a valid reason to stop defendant for the civil infraction. We defer to the trial court’s factual findings and the assessment of credibility. *Rodney Williams*, 470 Mich at 641. Accordingly, the trial court did not err in denying defendant’s motion to suppress.¹

Defendant’s conviction for DWSL is affirmed. We reverse defendant’s conviction for OWI and remand for a new trial in light of the blood alcohol evidence. We do not retain jurisdiction.

/s/ Karen M. Fort Hood
/s/ Pat M. Donofrio
/s/ Amy Ronayne Krause

¹ The statement of the issue as raised by the defense challenges the trial court’s decision regarding the motion to suppress. However, in the discussion section of defendant’s brief, it takes issues with testimony by Officer Switala at trial. The ruling on the motion to suppress occurred following an evidentiary hearing and was issued before trial. Furthermore, the credibility of the officer’s testimony, and any inconsistencies in light of the four-year period during which defendant absconded, presents an issue for the trier of fact.