

STATE OF MICHIGAN

COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ANTHONY PAUL PAONESSA,

Defendant-Appellee.

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UNPUBLISHED

March 7, 1997

No. 193023

LC No. 95-008949-FH

Before: Fitzgerald, P.J., and Holbrook, Jr. and E.R. Post,\* JJ.

PER CURIAM.

Defendant was charged as a fourth habitual offender, MCL 769.12; MSA 28.1084, with resisting and obstructing a police officer, MCL 750.479; MSA 28.747, possession of marijuana, MCL 333.7403(2)(d); MSA 14.15(7403)(2)(d), and transporting alcohol in an open container, MCL 257.624a; MSA 9.2324(1). Following a preliminary examination, defendant was bound over for trial by the district court. Before trial, however, defendant moved in circuit court to quash the information. Following a hearing on the motion, the circuit court found that the district court abused its discretion in binding defendant over for trial and ordered that the information be quashed. Plaintiff appeals as of right. We affirm

The charges filed against defendant arose from a routine traffic stop of a vehicle in which defendant was a passenger. The investigating officer stopped the vehicle because he believed that a high-beam head lamp on the vehicle was defective and therefore violated the Michigan Vehicle Code, MCL 257.1 *et seq.*; MSA 9.1801 *et seq.* However, it is undisputed by the parties that the vehicle's head lamps, in fact, complied with the requirements of the code at the time of the traffic stop. The sole issue on appeal is the legitimacy of the traffic stop.

Plaintiff argues that the circuit court erred in quashing the information because the investigating officer was entitled to stop the vehicle for either the defective head lamp or the driver's failure to dim his high beam as he approached the officer's position. We review a lower court's ruling that a police

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

officer's stop of an automobile was unreasonable under the clearly erroneous standard. *People v Christie (On Remand)*, 206 Mich App 304, 308; 520 NW2d 647 (1994).

MCL 257.683(2); MSA 9.2383(2), provides:

A police officer on reasonable grounds shown may stop a motor vehicle and inspect the motor vehicle, and if a defect in equipment is found, the officer may issue the driver a citation for a violation of a provision of sections 683 to 714a.

In this case, it is uncontroverted that the investigating officer stopped the vehicle because one of the vehicle's high-beam head lamps was inoperative. However, it is also uncontroverted that the vehicle had three working head lamps, and that only two working head lamps are required by the code. MCL 257.685(a); MSA 9.2385(a). Because the vehicle was not in violation of § 685(a), we conclude that the officer did not have reasonable grounds on which to stop the vehicle. Accordingly, we are not left with a definite and firm conviction that the circuit court erred in finding the stop of the vehicle to be unreasonable. *Christie, supra* at 308.

As an alternative basis for the legitimacy of the traffic stop, the prosecutor contends that the driver of the vehicle violated § 700(b) of the code, MCL 257.700(b); MSA 9.2400(b), by failing to dim the high-beam head lamps when approaching the officer's vehicle. However, a review of the transcript of the preliminary examination clearly reveals that the officer initiated the stop because of the defective high-beam head lamp, and any discussion regarding the failure to dim the high beams was not related to a violation independent of the inoperative high-beam head lamp. Accordingly, this contention is without merit.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Donald E. Holbrook, Jr.  
/s/ Edward R. Post