

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ROSS ANTHONY WHITE,

Defendant-Appellee.

UNPUBLISHED

December 23, 1997

No. 198622

Oakland Circuit Court

LC No. 96-DA-6515 AR

Before: McDonald, P.J., and Wahls and J. R. Weber*, JJ.

MEMORANDUM.

Pursuant to the Michigan Supreme Court's order for consideration by this Court as on leave granted, *People v White*, 453 Mich adv 910 (1996), plaintiff contests the ruling of the district court, at the preliminary examination stage, granting defendant's motion to suppress evidence in this prosecution for operating a motor vehicle while under the influence of intoxicating liquor. The trial court found that the initial stop of defendant's motor vehicle was invalid under the Fourth Amendment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Because the initial stop involved a moving motor vehicle, for Fourth Amendment purposes the proper test is whether the police officer involved had a reasonable basis for effectuating a traffic stop. *People v Whalen*, 390 Mich 672, 682; 213 NW2d 116 (1973). A trial court's findings of fact are subject to appellate correction only if clearly erroneous. *People v LoCicero*, 453 Mich 496, 500; 556 NW2d 498 (1996).

Here, the arresting officer testified at examination that he stopped defendant's vehicle because he perceived that the exhaust noise emitting from the vehicle was excessively loud. The officer acknowledged that he had no scientific instrumentation with him for measuring the noise level, nor had he been trained in differentiating permissible from impermissible noise levels. The district judge found that defendant did not violate any traffic laws in the officer's presence and that the motor vehicle's exhaust was not unusually loud. We do not believe that the trial court's findings were clearly erroneous. Under these circumstances, we find no error in the district court's conclusion that the arresting officer

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

lacked a reasonable basis from which to conclude that the defendant's vehicle was generating an excessive noise level.

Affirmed.

/s/ Gary R. McDonald

/s/ Myron H. Wahls

/s/ John R. Weber