

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

KENNETH DWAYNE JENKINS,

Defendant-Appellee.

UNPUBLISHED

April 9, 1999

No. 213574

Washtenaw Circuit Court

LC No. 95-005371 FH

Before: Neff, P.J., and Kelly and Hood, JJ.

PER CURIAM.

The Washtenaw County Prosecutor charged defendant Kenneth Dwayne Jenkins with possession of between 50 and 225 grams of cocaine in violation of MCL 333.7403(2)(a)(iii); MSA 14.15(7403)(2)(a)(iii). The trial court granted defendant's motion to suppress the evidence seized during a roadside search of his vehicle's trunk. On appeal, this Court reversed and remanded the case for further proceedings. On remand, the trial court again granted defendant's motion to suppress and dismissed the case. The prosecutor now appeals as of right. We affirm.

I

The prosecutor first argues that the trial court's orders of suppression and dismissal violate the doctrine of the law of the case. We disagree.

The law of the case doctrine provides that "if an appellate court has passed on a legal question and remanded the case for further proceedings, the legal questions thus determined by the appellate court will not be differently determined [on remand]." *CAF Investment Co v Saginaw Twp*, 410 Mich 428, 454, 302 NW2d 164 (1981). Similarly, the trial court may not take any action on remand that is inconsistent with the previous judgment of the appellate court. *Kalamazoo v Dep't of Corrections*, 229 Mich App 132, 134; 580 NW2d 475 (1998).

In the present case, we find that the trial court did not decide the legal questions presented by this case differently than did the prior panel of this Court. On remand, the trial court's order stated:

[T]his Court finds *as a matter of fact* that the officer did not use the speedometer or any other device or visual observation to make a speeding stop. . . [T]he testimony of the officer regarding a stop for a speeding violation is not credible. . . (emphasis added).

The prosecutor's protestations notwithstanding, this conclusion is wholly consistent with this Court's earlier ruling that the use of a patrol car's speedometer is sufficient to provide the officer with the requisite probable cause that the driver was speeding.

II

The prosecution also insists that the trial court's factual determination is clearly erroneous. Specifically, the prosecution suggests that because the officer's testimony was uncontradicted, the trial court had no choice but to believe it. Again, we disagree.

It is well settled that credibility is a matter for the trial court, as the trier of fact, to decide. *People v Fetterley*, 229 Mich App 511, 545; 583 NW2d 199 (1998). Here, the court was free to disbelieve the officer. Absent some other compelling evidence to the contrary, there is simply no basis for challenging the trial court's conclusion.

III

Because we find that the trial court's determination - - that the police officer did not determine that defendant was speeding before he conducted the stop of defendant's vehicle - - was neither inconsistent with the law of the case nor clearly erroneous, we affirm the court's orders granting defendant's motion to suppress and dismissing the case.

Affirmed.

/s/ Janet T. Neff
/s/ Michael J. Kelly
/s/ Harold Hood