STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED January 26, 2001
v	No. 225712 Livingston Circuit Court
DONALD ANDREW HAMILTON, Defendant-Appellee.	LC No. 00-011463-FH

Before: Doctoroff, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Defendant was charged with one count of operating a vehicle under the influence of intoxicating liquor, MCL 257.625(1); MSA 9.2325(1), and one count of operating a vehicle with a suspended or revoked operator's license, 257.904(3)(a); MSA 9.2604(3)(a). Defendant had twice previously been convicted of violating MCL 257.625(1)(a); MSA 9.2325(1)(a). Therefore, had he been convicted as charged, defendant would have been guilty of a felony pursuant to MCL 257.625(10)(c); MSA 9.2325(10)(c). The prosecutor appeals by right from the circuit court's grant of defendant's motion to quash the information. We affirm.

This case arises out of a traffic stop made on November 21, 1999, by Officer Darren Lockhart of the City of Howell Police Department. The traffic stop took place outside the City of Howell. The prosecutor first argues that the dismissal of the case against defendant was improper because of the applicability of MCL 762.3(3)(a); MSA 28.846(3)(a). We disagree. This Court reviews a "circuit court's decision to grant or deny a motion to quash a felony information de novo to determine if the district court abused its discretion in ordering bindover." *People v Northey*, 231 Mich App 568, 574; 591 NW2d 227 (1998).

The prosecutor argues that dismissal was not warranted because Officer Lockhart had the authority to arrest defendant within one mile of the city of Howell's border. The prosecutor's argument is based on MCL 762.3(3)(a); MSA 28.846(3)(a), which provides:

> If an offense is committed on the boundary of 2 or more counties, districts or political subdivisions or within 1 mile thereof, venue is proper in any of the counties, districts or political subdivisions concerned.

Our Supreme Court has stated that if "the language of [a] statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written. No further judicial construction is required or permitted." *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). Clearly, the statute cited above relates only to the proper venue for the prosecution of defendants. It does not relate to police authority to stop or arrest individuals. We do not have the authority to extend the scope of the statute to give city police officers the right to stop and arrest individuals within one mile of their city's border.

MCL 764.2a; MSA 28.861(1) provides:

> A peace officer of a county, city, village, or township of this state may exercise authority and powers outside his own county, city, village, or township, when he is enforcing the laws of this state in conjunction with the Michigan state police, or in conjunction with a peace officer of the county, city, village, or township in which he may be, the same as if he were in his own county, city, village, or township.

The prosecutor concedes that Officer Lockhart was not acting in conjunction with any other law enforcement agency and was not in "hot pursuit" of defendant at the time of the traffic stop. Therefore, by stopping and arresting defendant outside the boundaries of his jurisdiction, Officer Lockhart acted in violation of MCL 764.2a; MSA 28.861(1). The prosecutor argues that even if Officer Lockhart did violate the statute, dismissal of the case was an improper remedy. To support this argument, the prosecutor relies primarily on *People v Clark*, 181 Mich App 577; 450 NW2d 75 (1989), and *People v Meyer*, 424 Mich 143; 379 NW2d 59 (1985). However, the prosecutor's contention that *Meyer* and *Clark* represent controlling precedent in the present case is erroneous because of an important factual distinction between those cases and the present case.

In *Clark*, an undercover Livonia police officer purchased cocaine from the defendant in Wixom. *Clark, supra* at 578-579. The police officer paid the defendant for the cocaine in Novi. *Id.* at 578. Because this drug transaction was part of an ongoing investigation, the defendant was not arrested immediately by the officer who was operating outside his jurisdiction and not in conjunction with any other police departments. *Id.* at 579. The defendant was arrested and charged with delivery of cocaine at a later date. *Id.* The district court suppressed the evidence and dismissed the charge against the defendant because the police officer was acting outside his jurisdiction when he purchased the cocaine from the defendant; consequently, his actions were in violation of MCL 764.2a; MSA 28.861(1). This Court reversed, stating:

> In this case, the only illegal police conduct involved is an apparent violation of MCL 764.2a; MSA 28.861(1) . . . . Defendant fails, however, to establish either that there was a violation of a constitutional right or that the above statute was intended or designed to protect the rights of criminal defendants. [*Clark, supra* at 580.]

Citing *Meyer, supra*, this Court held that a police officer's violation of the statute, without more, did not warrant imposition of the exclusionary rule because "the purpose of MCL 764.2a; MSA 28.861(1) is not to protect the rights of criminal defendants, but rather to protect the rights and autonomy of local governments." *Clark, supra* at 581.

Meyer, like *Clark*, involved an undercover police officer who engaged in a drug transaction outside of his jurisdiction. *Meyer, supra* at 147-149. The police officer in *Meyer* was not involved in the defendant's arrest, but did swear to and sign the felony complaint against the defendant. *Id.* at 152. The trial court dismissed the case because of the officer's violation of MCL 764.2a; MSA 28.861(1). *Id.* at 149. This Court affirmed the trial court's decision. *Id.* at 149-150. Our Supreme Court reversed. *Id.* at 162. When our Supreme Court framed the issue to be addressed, it noted that because the police officer only swore to and signed the felony complaint against the defendant, "this case is *unlike* other cases wherein the police officer operating outside his jurisdiction arrests the defendant." *Id.* at 153 n 9 (emphasis in original). That, however, is precisely the situation in the present case: while operating outside his jurisdiction, the police officer stopped and arrested defendant. Therefore, both *Clark* and *Meyer* are distinguishable from the present case and do not constitute controlling law.

In *Meyer*, our Supreme Court cited *People v Davis*, 133 Mich App 707; 350 NW2d 796 (1984), as a case involving an arrest by an officer outside her jurisdiction. *Meyer, supra* at 153 n 9. In *Davis*, this Court stated that "police officers acting outside their jurisdiction have the authority as citizens under MCL 764.16; MSA 28.875, given probable cause, to make an arrest for a felony committed in their presence." *Davis, supra* at 715. For that rule to apply in the present case, we must first determine whether Officer Lockhart had the authority as a citizen to stop and arrest defendant. In relevant part, MCL 764.16; MSA 28.875 provides:

> A private person may make an arrest – in the following situations:
>
> (a) For a felony committed in the private person's presence;
>
> (b) If the person to be arrested has committed a felony although not in the private person's presence.

Because Officer Lockhart did not have probable cause to believe that defendant had committed or was committing a felony, he did not have authority under MCL 764.16; MSA 28.875 to arrest defendant.

As this Court has stated, '"[n]o one without a warrant has any right to make an arrest in the absence of actual belief, based on actual facts creating probable cause of guilt."' *People v Panknin*, 4 Mich App 19, 27; 143 NW2d 806 (1966), quoting *People v Bressler*, 223 Mich 597, 600-601; 194 NW 559 (1923), quoting *People v Burt*, 51 Mich 199, 202; 16 NW 378 (1883). The prosecutor admits that the traffic stop was made because the vehicle had no taillights and appeared to be weaving. Viewing a car with no taillights gave Lockhart probable cause to believe that a civil infraction had occurred in his presence. Furthermore, even if the weaving of the vehicle gave Lockhart probable cause to believe that defendant was intoxicated, Lockhart still had no authority to arrest defendant under MCL 764.16; MSA 28.875 because he was not aware that a felony had occurred in his presence. A person guilty of operating a motor vehicle while intoxicated is generally guilty of a misdemeanor. MCL 257.625(8)(a); MSA 9.2325(8)(a). As previously noted, if defendant had been convicted of operating a motor vehicle while intoxicated, he would have been guilty of a felony pursuant to MCL 257.625(10)(c); MSA 9.2325(10)(c), because it would have been his third conviction within ten years. However, the lower court record indicates that officer Lockhart was unaware of defendant's previous convictions at the

time he stopped and arrested defendant. Therefore, at most, Lockhart had probable cause to believe that a misdemeanor had been committed in his presence.

The next issues are whether the district court abused its discretion in binding over defendant, and whether the circuit court properly suppressed the evidence in this case and quashed the felony information. We find that the information was properly quashed because the exclusionary rule of evidence is applicable in this case. In *Meyer* and *Clark*, the police officers' violations were statutory, not constitutional, because probable cause existed to arrest the defendants for committing felonies. *Meyer*, *supra* at 160; *Clark*, *supra* at 580. Similarly, in *Davis*, this Court found that although the police officers may have acted in violation of MCL 764.2a; MSA 28.861(1) in surveilling and arresting the defendant outside of their jurisdiction, the exclusionary rule was inapplicable because probable cause existed to arrest the defendant for the commission of a felony. *Davis*, *supra* at 714-715. This Court has stated that "[t]he per se exclusionary rule arose out of and applies to constitutionally invalid arrests. The constitutional validity of an arrest depends on whether probable cause to arrest existed at the moment the arrest was made by the officer." *People v Lyon*, 227 Mich App 599, 611; 577 NW2d 124 (1998). Because probable cause did not exist to arrest defendant for the commission of a felony, his arrest by Officer Lockhart was constitutionally invalid. Thus, the exclusionary rule applied to the evidence against defendant, and the district court abused its discretion by binding defendant over to the circuit court. Accordingly, the circuit court properly quashed the information.

We reach our conclusion based on a plain, unambiguous statute that clearly applies to the instant factual situation. As judges, we must apply the law as written regardless of whether the outcome is consistent with our own personal notions of how an issue should be resolved. As this decision raises an issue that may not have been contemplated by our Legislature, we would urge consideration of it now as it is likely that this scenario will reoccur more and more as our cities grow and where borders of different jurisdictions become mere landmarks.

We affirm.

/s/ Martin M. Doctoroff
/s/ Joel P. Hoekstra
/s/ Jane E. Markey