

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

V

ARTHUR DAVID LEVIN,

Defendant-Appellee.

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UNPUBLISHED

August 9, 2002

No. 234653

Oakland Circuit Court

LC No. 00-007537-AR

Before: Whitbeck, C.J., and Wilder and Zahra, JJ.

PER CURIAM.

The prosecution appeals the circuit court's order, which affirmed the district court's orders granting defendant's motions to suppress evidence and dismissing the case. We reverse and remand.

Defendant was charged with operating a motor vehicle under the influence of intoxicating liquor, MCL 257.625(1)(a), subject to a second habitual offender enhancement if convicted, MCL 257.625(7)(b), and possession of open intoxicants in a motor vehicle, MCL 257.624a. At a hearing on defendant's motion to suppress evidence, testimony<sup>1</sup> established that Farmington Hills police officers were on patrol in a fully marked car, when they were flagged down by an unidentified citizen. The citizen told police that she observed a drunk driver. The citizen indicated that the suspected drunk driver's vehicle was a Cadillac with small tail lights. The police officers made a 180 degree turn in the direction that the citizen indicated the Cadillac had traveled in an effort to "catch up" to the Cadillac. In less than two minutes after talking with the citizen, the police officers observed a vehicle matching the description given by the citizen. The Cadillac was observed weaving. The police officers observed the Cadillac slow to a stop and eventually stop approximately 1-1/2 car lengths from the intersection. When the traffic light turned green, the Cadillac made a wide left turn onto Middlebelt and over corrected, which caused the vehicle to go left of the center lines before it proceeded northbound on Middlebelt. As defendant made this left turn, he exited the city of Farmington Hills and entered West Bloomfield Township. Immediately, defendant put his signal light on to make a quick right turn, braked sharply and crossed the center line of the street. After the police officers turned on the

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<sup>1</sup> The testimony relied on at the evidentiary hearing came from an administrative hearing that was related to defendant's implied consent and initial refusal to take a chemical blood test.

police overhead light and siren, defendant stopped the Cadillac. The police officers did not contact West Bloomfield Township police when they entered West Bloomfield Township. When the police officers approached defendant, an open bottle of vodka was observed on the floor of the Cadillac. The police officers detected a strong odor of intoxicants on defendant's breath. Defendant performed poorly on field sobriety tests, and breathalyzer tests indicated blood alcohol levels of .19 percent and .22 percent.

Defendant moved in the district court to suppress the test results on the grounds that the extra-territorial stop and arrest was statutorily invalid and unconstitutional. At the administrative hearing, the police officers had testified that defendant was stopped because of the traffic violation that occurred as defendant made the wild turn, which caused him to go left of the center line. The district court granted the motion and dismissed the case, concluding that the police officers were not in actual pursuit of defendant until they entered West Bloomfield, and that the failure to contact West Bloomfield police made defendant's stop and arrest unlawful. The prosecution appealed to the circuit court, which affirmed the district court's decision. This Court granted the prosecution's application for leave to appeal the circuit court's order.

This Court reviews the trial court's underlying factual findings on a motion to suppress evidence for clear error. *People v Oliver*, 464 Mich 184, 191; 627 NW2d 297 (2001); *People v Beuschlein*, 245 Mich App 744, 748; 630 NW2d 921 (2001). A ruling is clearly erroneous where the reviewing court is firmly convinced that a mistake has been made. *People v Brezinski*, 243 Mich App 431, 433; 622 NW2d 528 (2000). This Court reviews de novo a trial court's ultimate decision on a motion to suppress. *Beuschlein, supra* at 748.

On appeal the prosecution argues that the district court erred when it found that a violation of MCL 764.2a required the suppression of evidence and dismissal of the charges against defendant. We agree.

In *People v Hamilton*, 465 Mich 526; 638 NW2d 92 (2002), our Supreme Court, faced with facts nearly identical to the facts present in the instant case, held that an illegal statutory arrest "did not necessarily render the arrest unconstitutional," *id.* at 532, and that the "exclusionary rule only applies to constitutionally invalid arrests, not merely statutorily illegal arrests. *Id.* at 532-533, citing *People v Lyon*, 222 Mich App 599, 611; 577 NW2d 124 (1998). There, a police officer for the city of Howell observed the defendant driving erratically and without operational taillights on M-59 in Howell Township. *Id.* at 528. The officer stopped the vehicle, performed sobriety tests, and arrested the defendant for OUIL, even though the stop and arrest was made outside of his jurisdiction the officer was not then working in conjunction with Howell Township's police officers, and the arrest was not made in "hot pursuit" of the defendant. See *id.*

The Supreme Court found that "MCL 764.2a does not require exclusion of evidence obtained as a result of police conduct that is not in accordance with the statute," *id.*, and that "the circuit court erred in suppressing the evidence and dismissing the charges against the defendant." *Id.*

Applying *Hamilton* to the facts in this case, it is clear that the district court erred when it found that because defendant was arrested outside of Farmington Hills in violation of MCL 764.2a, suppression of the evidence and dismissal of the case was warranted. *Hamilton, supra* at

535. As such, the circuit court also erred in affirming the district court's determination, and we reverse the circuit court decision in this case, and remand for trial.

We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ Kurtis T. Wilder

/s/ Brian K. Zahra