STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 22, 2005
v	No. 256179 Cheboygan Circuit Court
JOHN RUSSELL FARNER, Defendant-Appellant.	LC No. 03-002863-FH

Before: Smolenski, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of operating under the influence, third offense (OUIL 3d), MCL 257.625(1), possession of an open alcohol container in a vehicle, MCL 257.624a, and operating a vehicle in violation of a license restriction, MCL 257.312. For his OUIL 3d conviction, defendant was sentenced to 120 days in jail and twenty-four months probation. For both of defendant's other convictions, he was assessed $45 in state costs and a $100 fine. Defendant now appeals as of right and we affirm. This case is being decided without oral argument under MCR 7.214(E).

Michigan State Police Trooper Mark Erickson testified that in the early morning hours of November 8, 2003, he and another trooper were parked on the shoulder of road watching a nearby intersection. The lights of the squad car were off. At about 2:30 a.m., Erickson noticed a vehicle approaching the squad car from the rear. At some point, he hit the brakes of the squad car to alert the passing driver of the troopers' presence. The troopers identified the passing vehicle as a white pick-up truck with Illinois license plates.

Thinking it unusual that the truck hardly moved over as it passed, the troopers followed it. Shortly thereafter, defendant activated his turn signal and pulled into the parking lot of a closed business. Defendant parked his truck and then began to exit the vehicle. Erickson testified that he then activated the squad car's emergency overhead lights because he wanted to get defendant's attention and detain him for a short period of time while he and his partner investigated further.

Erickson asked defendant for identification and questioned him on why he had pulled into the parking lot. Defendant responded that he knew he was not supposed to be driving because his license had been restricted. Erickson smelled alcohol on defendant and noticed that his eyes were bloodshot. Defendant refused to perform any field sobriety tests or submit to any

chemical tests. Subsequently, defendant's blood was drawn pursuant to a warrant, the results of which showed a blood alcohol level of .17.

Defendant brought a motion to suppress the evidence that led to the felony charges, arguing that he was stopped without reasonable cause. The court denied defendant's motion, finding that the totality of all the circumstances raised a reasonable suspicion justifying the stop. Defendant's sole argument on appeal is that there were no indications of criminal activity to warrant any reasonable suspicion by the officers making the investigatory stop, and therefore the evidence obtained as a result should have been suppressed. We disagree.

This Court reviews a trial court's factual findings in a suppression hearing for clear error. *People v Jenkins*, 472 Mich 26, 31; 691 NW2d 759 (2005). However, we review de novo the application of the exclusionary rule to a Fourth Amendment violation. *Id.*

Both the United States Constitution and Michigan Constitution guarantee the right of persons to be secure against unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11; *Jenkins*, *supra* at 31. However, "a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest." *Terry v Ohio*, 392 US 1, 22; 88 S Ct 1868; 20 L Ed 2d 889 (1968). "A brief detention does not violate the Fourth Amendment if the officer has a reasonable articulable suspicion that criminal activity is afoot." *Jenkins*, *supra* at 32. Whether an officer has a reasonable suspicion to make such a stop is determined case by case, on the basis of an analysis of the totality of the facts and circumstances. *Id.* "Further, in determining whether the totality of the circumstances provide reasonable suspicion to support an investigatory stop, those circumstances must be viewed 'as understood and interpreted by law enforcement officers, not legal scholars . . . .' *People v Nelson*, 443 Mich 626, 632; 505 NW2d 266 (1993). Also, '[c]ommon sense and everyday life experiences predominate over uncompromising standards.' *Id.* at 635-636." *People v Oliver*, 464 Mich 184, 192; 627 NW2d 297 (2001). Finally, the reasonable suspicion needed for such stops requires a showing considerably less than a preponderance of the evidence. *Id.* at 202-203.

In the present case, defendant was seized within the meaning of the Fourth Amendment when officer Erickson activated his overhead lights and deterred defendant from leaving. *Jenkins*, *supra* at 34. However, under the totality of the circumstances, we conclude that this stop did not violate defendant's right to be free of unreasonable searches and seizures. While none of the events leading to defendant's stop were by themselves sufficient to create a reasonable suspicion, when examined in the aggregate these factors created a reasonable suspicion.

Defendant was observed driving past a police vehicle parked on the side of the road without moving over, as one might expect. For this reason, the officers decided to follow the vehicle. Soon after the police car pulled in behind defendant, he put on his turn signal and pulled into a deserted parking lot, exited his truck and began to walk away. Such behavior, when viewed as understood and interpreted by law enforcement officers, is evasive and may by itself raise a reasonable suspicion. *Oliver*, *supra* at 197. Furthermore, common sense and everyday life experiences indicate that the act of pulling into a deserted parking lot located in a rural area at 2:30 in the morning and then walking away from one's vehicle is unusual. The fact that these actions might have had an innocent explanation does not negate the reasonableness of the

officers' suspicion. *Oliver*, *supra* at 202. Therefore, the officers' stop of defendant was proper and the trial court did not err in refusing to suppress the evidence.

Affirmed.

/s/ Michael R. Smolenski
/s/ Bill Schuette
/s/ Stephen L. Borrello