

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

NATHAN DANIEL PALM,

Defendant-Appellee.

UNPUBLISHED

November 29, 2007

No. 272901

Macomb Circuit Court

LC No. 06-001055-FH

Before: Saad, P.J., and Jansen and Beckering, JJ.

PER CURIAM.

The prosecution appeals the trial court's order of dismissal after the court suppressed the results of defendant's breath and blood alcohol tests. Defendant was charged with operating a motor vehicle while intoxicated, third offense, MCL 257.625(1), and driving while license suspended, second offense, MCL 257.904(3)(a). For the reasons set forth below, we hold that, though defendant had standing to challenge his arrest, no Fourth Amendment violation occurred. Accordingly, we reverse the trial court's order that suppressed the test results, we reverse the order of dismissal, and we remand for further proceedings consistent with this opinion.

I. Facts and Procedural History

On February 26, 2006, at approximately 1:45 a.m., Macomb County Sheriff's Deputy Charles Osos saw defendant's vehicle traveling at 44 miles per hour in a 25 mile per hour zone. Deputy Osos turned his patrol car around to follow defendant, but before he turned on his lights or siren, Deputy Osos saw defendant quickly pull into a residential driveway and park his vehicle. Deputy Osos parked his patrol car in front of the house, turned on his overhead lights, and saw defendant take a few quick steps toward the house. Deputy Osos ordered defendant to stop and defendant did so and began to walk toward Deputy Osos. The deputy walked up the driveway toward defendant and the two met and spoke. During that discussion, Deputy Osos smelled a "very strong" odor of alcohol on defendant's breath and noticed that defendant's eyes were glassy. Placing his hand on defendant's upper arm, Deputy Osos then escorted defendant to a location near the patrol car parked on the street.

Deputy Osos arrested defendant for drunk driving after defendant failed two sobriety tests and a preliminary breathalyzer test. Defendant later submitted to a blood alcohol content test, which resulted in the charge of operating a motor vehicle while intoxicated. Before trial, defendant moved to suppress the alcohol tests and argued that his arrest violated the Fourth

Amendment, US Const, Am IV. The trial court agreed and granted defendant's motion to suppress and his motion for dismissal.

II. Analysis

A. Standing

The prosecution argues that defendant does not have standing to challenge his arrest on Fourth Amendment grounds because defendant had no legitimate expectation of privacy when he stood in the driveway of a residence that he did not own. Defendant contends that he has standing based on his unsupported assertion that the driveway belongs to someone who invited him to stay as an overnight guest. Both parties misapprehend the legal principle at issue. While defendant may not have standing to challenge the search of a premises owned by a third party or the seizure of a third person's property, he does have standing to challenge the seizure of his person.

It is well settled that "the Fourth Amendment protects people, not places." *Katz v United States*, 389 US 347, 351-352; 88 S Ct 507, 511, 19 L Ed 2d 576 (1967). And, as this Court recently reiterated in *People v Gadomski*, 274 Mich App 174, 178; 731 NW2d 466 (2007), "[t]he state and federal constitutional protection against unreasonable search and seizure 'is personal and may only be invoked 'at the instance of one whose own protection was infringed by the search or seizure.' " *People v Zahn*, 234 Mich App 438, 446, 594 NW2d 120 (1999) (citations and internal quotations omitted). Here, the issue is not whether the prosecution may introduce evidence following a search of property owned by defendant's acquaintance or objects seized on that property. Rather, the seizure at issue is of defendant himself and, regardless where it occurred, it is axiomatic that defendant may challenge whether Deputy Osos lawfully detained and arrested him. *Terry v Ohio*, 392 US 1, 8-9; 88 S Ct 1868; 20 L Ed 2d 889 (1968).

B. Seizure

Deputy Osos had probable cause to believe that defendant committed a traffic violation because he observed and registered defendant's excessive rate of speed in a residential neighborhood. Accordingly, Deputy Osos could lawfully stop defendant to run a check on defendant and the vehicle, to issue a citation, and to ask reasonable questions concerning the violation. *People v Davis*, 250 Mich App 357, 363-368; 649 NW2d 94 (2002); *People v Estabrooks*, 175 Mich App 532, 537-538; 438 NW2d 327 (1989); *People v Williams*, 472 Mich 308, 315; 696 NW2d 636 (2005). We reject defendant's argument that Deputy Osos had no right to walk up the driveway to talk to or to detain defendant. A driveway is a public place and there is no reasonable expectation of privacy on an open driveway, particularly if it is owned by someone else. *People v Shankle*, 227 Mich App 690, 693-694; 577 NW2d 471 (1998); *United States v Santana*, 427 US 38, 42; 96 S Ct 2406; 49 L Ed 2d 300 (1976); *United States v Smith*, 783 F2d 648, 651-652 (CA 6, 1986). Further, "[m]erely entering the private property of another is not an offense unless one has been forbidden to do so or refuses to depart after having been told to do so by a proper person." *Shankle*, *supra* at 694.

Once Deputy Osos lawfully stopped defendant, he smelled alcohol on defendant's breath. The scent of alcohol is enough to create reasonable suspicion to justify sobriety tests, if under the totality of the circumstances the officer believes that the suspect was driving under the influence. *People v Rizzo*, 243 Mich App 151, 161-162; 622 NW2d 319 (2000). After he performed sobriety tests that indicated that defendant was intoxicated, Deputy Osos administered a preliminary breathalyzer test, which confirmed defendant's intoxication. Because Deputy Osos lawfully stopped, detained, and arrested defendant, his Fourth Amendment rights were not violated and the trial court should not have suppressed the evidence obtained. *Terry, supra*.

The trial court's order that suppressed the alcohol test results is reversed, the order of dismissal is reversed, and the case is remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Jane E. Beckering