

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LATERRIA LYNN LOCKHART,

Defendant-Appellant.

UNPUBLISHED

May 8, 2008

No. 276431

Wayne Circuit Court

LC No. 06-009144-01

Before: O’Connell, P.J., and Borrello and Gleicher, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of carrying a concealed weapon, MCL 750.227, possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(iv), and possession of a firearm during the commission of a felony, MCL 750.227b. She was sentenced to a two-year term of imprisonment for the felony-firearm conviction, and one year of probation for the remaining convictions. She appeals as of right. For the reasons set forth in this opinion, we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Officer Yudt testified that he was on routine patrol when he spotted a Volvo speeding on a residential street. He followed the vehicle, which turned onto another street and pulled into a residential driveway. Yudt took up surveillance and saw the driver and passenger step out of the car, rearrange items in the backseat, return to the car, and drive away. The driver went up to the corner, shifted into reverse gear, and “floored it in reverse up into the same driveway they were before.” After making contact with the driver, Yudt determined that because the driver was unable to produce a driver’s license he was going to place the driver under arrest. Yudt then told the passenger, whom he identified as defendant, why he was there and asked her to step out of the car. Defendant complied and apparently had her purse in her hand. Yudt asked defendant to put her purse on top of the car for safety reasons. Defendant ignored him and instead “walked around the front of the car and” sat in the driver’s seat. When defendant ignored a request to step out of the vehicle, Yudt “advised her she’s under arrest for hindering my investigation.” Defendant then got out of the car and ran down the street. She did not stop until Yudt warned that he would use his Taser. At that point, defendant “laid on the ground and threw the purse.” After Yudt arrested defendant, he searched her purse and found a loaded Glock pistol and a plastic bag containing five rocks of crack cocaine, each packaged in a smaller bag.

Defendant testified that she got out of the car at Yudt’s request, at which time he placed her under arrest. She did not remove her purse from the car when she got out and did not try to

flee the scene. She stated that her purse had been in the car since the previous day. She did not know what was in it and was unaware that it contained either a gun or cocaine.

Defendant first contends that the trial court erred in denying her motion to suppress the evidence because Yudt lacked reasonable suspicion to conduct a traffic stop. Defendant raised this issue below and thus it has been preserved for appeal. *Reed v Reed*, 265 Mich App 131, 163; 693 NW2d 825 (2005). This Court reviews a trial court's factual findings at a suppression hearing for clear error, but reviews the ultimate ruling on a motion to suppress de novo. *People v Marcus Davis*, 250 Mich App 357, 362; 649 NW2d 94 (2002), lv den 467 Mich 910 (2002).

"In order to effectuate a valid traffic stop, a police officer must have an articulable and reasonable suspicion that a vehicle or one of its occupants is subject to seizure for a violation of law." *People v Williams*, 236 Mich App 610, 612; 601 NW2d 138 (1999) (footnote omitted). The testimony showed that Yudt did not conduct a traffic stop. He had the vehicle under surveillance and approached to investigate after it had parked and the occupants had gotten out of the car.

"[T]o constitute a seizure for purposes of the Fourth Amendment there must be either the application of physical force or the submission by the suspect to an officer's show of authority." *People v Lewis*, 199 Mich App 556, 559; 502 NW2d 363 (1993). A police approach for questioning on the street does not amount to an investigatory stop "unless there exists intimidating circumstances leading the person to reasonably believe he was not free to leave or the person rebuffs the police officer by refusing to answer and walking away." *People v Daniels*, 160 Mich App 614, 619; 408 NW2d 398 (1987). "When an officer approaches a person and seeks voluntary cooperation through noncoercive questioning, there is no restraint on that person's liberty, and the person is not seized." *People v Jenkins*, 472 Mich 26, 33; 691 NW2d 759 (2005).

There is no evidence that Yudt exhibited some display of authority, e.g., activated his lights and siren, displayed his weapon, or issued orders to defendant as he approached. See *People v Mamon*, 435 Mich 1, 12; 457 NW2d 623 (1990). Further, there is no evidence that defendant tried to leave upon seeing Yudt approaching and was prevented from doing so. Therefore, in exiting his car and approaching defendant and her companion, Yudt did not seize defendant. While the trial court concluded that Yudt's conduct was supported by reasonable suspicion, we will not reverse where the trial court reaches the right result for the wrong reason. *People v Lyon*, 227 Mich App 599, 612-613; 577 NW2d 124 (1998), lv den 459 Mich 882 (1998).

Defendant next contends that even if the initial encounter was lawful, the evidence should have been suppressed because Yudt lacked reasonable suspicion to detain her at the scene. Defendant did not raise this issue below and thus it has not been preserved for appeal. *People v Bauder*, 269 Mich App 174, 177; 712 NW2d 506 (2005), lv den 476 Mich 863 (2006). Therefore, defendant must establish a plain error that affected her substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999), reh den 461 Mich 1205 (1999). A plain error is not apparent from the record. The prosecutor was not required to establish a constitutional basis for defendant's detention at the scene because defendant never raised the issue below, and it has not been shown that all facts necessary for proper resolution of this issue were presented. See *Davis*, *supra* at 364.

Affirmed.

/s/ Peter D. O'Connell
/s/ Stephen L. Borrello
/s/ Elizabeth L. Gleicher