

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MARK LAVELL LEONARD,

Defendant-Appellee.

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UNPUBLISHED

May 27, 2008

No. 270638

Wayne Circuit Court

LC No. 05-009123-01

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

SCHUETTE, J. (*concurring in part and dissenting in part*).

I concur in the conclusion reached by my distinguished colleague, Judge Davis, that the initial stop of the Ford Explorer was permissible and constitutional. Officer Tonti had a reasonable suspicion of ongoing criminal activity in the area, providing him with an appropriate basis to effectuate a stop of the vehicle. *People v Oliver*, 464 Mich 184, 192; 627 NW2d 297 (2001); *Terry v Ohio*, 392 US 1, 30-31; 88 S Ct 1868; 20 L Ed 2d (1968). Therefore, I would reverse the trial court on this issue.

However, I dissent from Judge Davis’s viewpoint that the search of the vehicle was not permissible and contained constitutional flaws. On the contrary, the search of the vehicle, after a legitimate stop, was a proper and valid search incident to the arrest of the driver for driving without a license. *People v Mungo*, 277 Mich App 577, 591; \_\_\_ NW2d \_\_\_ (2008); *People v Eaton*, 241 Mich App 459; 617 NW2d 363 (2000). Here, it would appear from a review of the record that defendant and the other passengers in the vehicle would be able to place or retrieve a variety of items, including stolen credit cards, from within the car while it is in motion by simply pulling the “tag” or cloth hook, which lifts up a portion or portions of the back seat. Therefore, this area under the back seat that is accessed by the “easy lift” tag or cloth hook would seem to be similar to a “container”<sup>1</sup>—which this Court has construed as being within the reach of a valid search incident to an arrest—but not similar to an inaccessible trunk. *Eaton, supra* at 463-465.

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<sup>1</sup> Container is defined as “any object capable of holding another object. It thus includes closed or open glove compartments, consoles, or any other receptacles located anywhere within the passenger compartment . . . .” *Eaton, supra* at 463, quoting *New York v Belton*, 453 US 454, 460 n 4; 101 S Ct 2860; 69 L Ed 2d 768 (1981).

Accordingly, I would reverse any conclusion of the trial court that suggests that the search of the Ford Explorer and the discovery of the stolen credit cards were impermissible.

Further, because I believe that both the stop and search of the vehicle were valid, I must dissent from my colleagues' determination that the line-up identification of defendant was tainted and should be suppressed. I would reverse the trial court's ruling on this matter as well.

Finally, I concur with my colleagues that the trial court erred in suppressing the in-court identification of defendant. *United States v Crews*, 445 US 463, 477-478; 100 S Ct 1244; 63 L Ed 2d 537 (1980); *People v Jackson*, 46 Mich App 764, 771; 208 NW2d 526 (1973).

I would reverse the ruling of the trial court.

/s/ Bill Schuette