

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

CORTLAND ANTONIO MILLER,

Defendant-Appellee.

UNPUBLISHED

November 13, 2008

No. 281690

Wayne Circuit Court

LC No. 07-005498-FH

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

PER CURIAM.

In this prosecutor's appeal, plaintiff appeals as of right the circuit court's decision to suppress evidence and dismiss this case. We reverse and remand for further proceedings. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This case began when two police officers in a semi-marked police car observed and approached defendant's truck, which was illegally parked at the time.¹ The police officers activated their vehicle's lights, and one officer approached the truck on each side. Defendant was alone and in the driver's seat; one of the officers described him as appearing very nervous, with shaky hands. Defendant turned on his truck's interior light when he was asked for his license and registration, and the officer spotted a plastic baggie with a twisted knot protruding from defendant's jacket pocket. The officer stated that he thus recognized what was routine packaging for controlled substances. The officer then signaled to his partner that a search for narcotics was in order. The officer continued that, upon assisting defendant in leaving his truck, he was able to see what appeared to be powder cocaine inside the pocket. The officer testified that, in his 12 years with the Detroit Police, he had seen cocaine in its various forms over 100 times.

Defendant moved to suppress the cocaine on the ground that it was the product of an illegal search. The trial court held a hearing and initially concluded that the search and seizure were proper, and then denied a motion for reconsideration. The trial court acknowledged the

¹ Defendant argued that he was not in fact illegally parked at the time in question, but the trial court concluded from the exhibits that the police had indeed identified an illegally parked vehicle.

considerable experience of the officer who observed the cocaine, and regarded the observation of apparent drug packaging, coupled with defendant's nervousness, as grounds justifying asking defendant to leave his car and submit to a pat-down search. Defendant then offered a guilty plea. At sentencing, however, the trial court reversed itself. The court declared that a reasonable person, situated as defendant was at the time in question, would not have felt at liberty to leave, and thus that a seizure of defendant had taken place, and that for that reason the evidence would be suppressed, and the case dismissed. The trial court dismissed the case without prejudice, and this appeal followed. Plaintiff does not contest any of the trial court's factual findings, but rather argues that defendant was not seized at the time in question or, alternatively, that defendant's parking violation justified the seizure.

Evidence obtained in the course of a violation of a suspect's rights under the Fourth Amendment of the United States Constitution is subject to suppression at trial. *People v Cartwright*, 454 Mich 550, 557-558; 563 NW2d 208 (1997). See also *Mapp v Ohio*, 367 US 643; 81 S Ct 1684; 6 L Ed 2d 1081 (1961) (incorporating the Fourth Amendment against the states under the Fourteenth Amendment). In reviewing a trial court's decision following a suppression hearing, we review the trial court's factual findings for clear error, but review the legal conclusions de novo. See *People v Abraham*, 234 Mich App 640, 644; 599 NW2d 736 (1999). The trial court's determination was clearly that it regarded defendant's seizure as unlawful, and thus the evidence obtained was the fruit of the poisonous tree. See *Wong Sun v United States*, 371 US 471, 487-488; 83 S Ct 407; 9 L Ed 2d 441 (1963).

On appeal, plaintiff expressly takes issue with none of the trial court's factual findings. Plaintiff first argues that the court erred in holding that defendant was seized when officers asked for his license and registration. Plaintiff also argues that the trial court erred in holding that a parking violation did not provide a valid basis for the stop and inquiry. We conclude that the trial court correctly held that defendant was seized, but the trial court incorrectly regarded the seizure as an illegal one.

Plaintiff first argues that defendant was not seized. We disagree. The police may approach a person on the street for questioning without seizing that person, unless intimidating circumstances reasonably lead the person approached to believe that he or she is not free to leave. *People v Shankle*, 227 Mich App 690, 693; 557 NW2d 471 (1998). This includes a mere request for license and registration from a person in a parked car. *Id.* at 697-698. In this case, however, in light of evidence that the police pulled up behind defendant and activated their police lights, then approached defendant from both sides of his car, we find no clear error in the trial court's conclusion that defendant did not reasonably feel at liberty not to cooperate with the police and leave the scene at that moment. Therefore, defendant was seized within the meaning of the Fourth Amendment at the time.

However, plaintiff also argues that if defendant was seized, that seizure was justified and lawful. We agree. A parking violation is a violation of law that justifies the police in requesting that the driver produce his driver's license. *People v Ingram*, 412 Mich 200, 204; 312 NW2d 652 (1981). See also *United States v Copeland*, 321 F3d 582, 594 (CA 6, 2003) (the police "can effect a stop based upon a driver's failure to comply with Michigan's parking regulations"). The United States Supreme Court has held that it is unreasonable under the Fourth Amendment for the police to stop a car and detain the driver to check the driver's license or the vehicle's registration, "except in those situations in which there is at least articulable and reasonable

suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law.” *Delaware v Prouse*, 440 US 648, 663; 99 S Ct 1391; 59 L Ed 2d 660 (1979).

We conclude that, by implication, the police in this case legally detained defendant for the purpose of checking his license and registration, because at the time they had a reasonable suspicion that defendant’s vehicle or its occupant were subject to seizure for a violation of law. The resulting observation by one officer that defendant apparently had drug packaging on his person, coupled with defendant’s display of nervousness, afforded probable cause to detain defendant further and search him for the suspected contraband. Therefore, We reverse the decision below and remand this case to the trial court for further proceedings consistent with this opinion.

Reversed and remanded. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ Stephen L. Borrello
/s/ Alton T. Davis