

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JAMES LEE BISHOP,

Defendant-Appellee.

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UNPUBLISHED

November 25, 2008

No. 284303

Calhoun Circuit Court

LC No. 2007-004402-FH

Before: Markey, P.J., and Whitbeck and Gleicher, JJ.

GLEICHER, J. (*dissenting*).

I respectfully dissent. In my view, Officer Seth Graves lacked a reasonable suspicion to stop the pickup truck in which defendant rode as a passenger. Even had Graves possessed a valid basis for stopping the truck, he lacked any reasonable suspicion to detain the truck's occupants after he determined that the truck bore an out-of-state registration. For these reasons, I would affirm the circuit court's order suppressing the evidence of firearms that the police discovered during a subsequent search of the truck.

I. Factual Background

Officer Graves testified that as he drove westbound on Columbia Avenue around 3:00 p.m. on October 5, 2007, he noticed a GMC pickup in front of him. Graves "closed up the distance" between his vehicle and the pickup. He described the next events as follows:

*Graves:* As soon as I—I looked at the truck I noticed that there was something covering the plate.

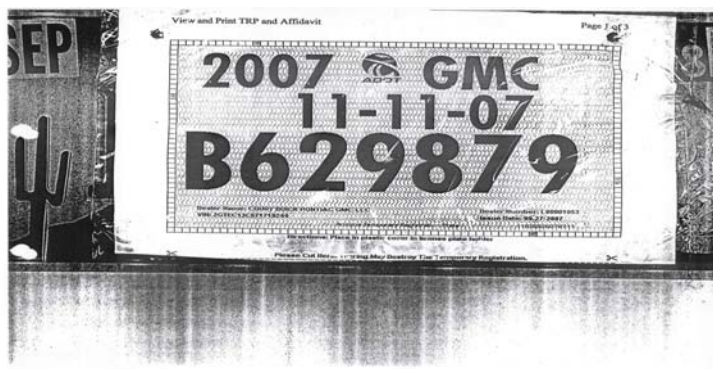
*Defense Counsel:* Okay. Uh, did you see any numbers or letters on that, uh, paper?

*Graves:* Uh, there might have been a port—portion on either side that was displayed. You could see that it appeared to be an out-of-state plate based on—again, I've been doing this for a long time so you could tell the different types of out-of state plates, but—

*Defense Counsel:* Okay. So you knew it with [sic] an out-of-state plate, it was not a Michigan plate?

*Graves:* That appeared to be, correct.

Graves described that a “paper” partially covered the pickup’s out-of-state registration plate. He identified this copy of the “paper” partially covering the plate:



Graves explained that he made the traffic stop because “[t]he license plate on the vehicle was ... partially covered” with “[t]he temporary ... registration, I guess, for lack of a better term.” After he stopped the truck, Graves collected identification documents from the pickup’s occupants, “ran the subjects through LEIN,” and ascertained that none triggered a positive report.

*Defense Counsel:* And my understanding from your direct testimony you—you explained to the driver why he was being stopped?

*Graves:* Yes, sir.

*Defense Counsel:* And what did you explain to him?

*Graves:* That the license plate was covered, in the State of Michigan you can’t do that.

*Defense Counsel:* Okay. And what was his response?

*Graves:* In Arizona they do.

Graves expressed his belief that Michigan law required “that vehicles operated within the State of Michigan have to abide by the same laws regardless . . . where they’re from.”

## II. Probable Cause

The majority holds that Graves possessed probable cause to stop and detain the pickup because its Arizona license plate violated MCL 257.225(2). That statute provides,

A registration plate shall at all times be securely fastened in a horizontal position to the vehicle for which the plate is issued so as to prevent the plate from

swinging. The plate shall be attached at a height of not less than 12 inches from the ground, measured from the bottom of the plate, in a place and position which is clearly visible. *The plate shall be maintained free from foreign materials that obscure or partially obscure the registration information, and in a clearly legible condition.* [Emphasis supplied.]

The majority misapprehends the clear and unambiguous language of this statute when it observes that “the license plate was partially covered in violation of MCL 257.225(2).” *Ante* at 7. The statute’s terminology does not prohibit “partially covering” a plate. It clearly and unambiguously prohibits the placement of “foreign materials” that “obscure or partially obscure the registration information.” A temporary registration simply does not qualify as a “foreign material,” and the record contains no evidence that the temporary registration obscured or partially obscured the underlying license plate’s registration information. Because the paper document *constituted* the registration information, it in no sense “obscured” the registration information. Presumably, the truck’s operator could not have legally driven the truck in the *absence* of the temporary registration.

The statutory authority under which Graves stopped the truck requires that an officer observe a “foreign material” that “obscure[s] or partially obscures[s] the registration information.” But here Graves readily admitted that he recognized from his inception of the stop that “the temporary ... registration, I guess, for lack of a better term” covered the license plate. The record contains no evidence supporting that “foreign materials” either obscured or partially obscured the pickup’s registration information. Therefore, the pickup’s driver had violated no laws at the time Graves conducted the traffic stop.

The language in MCL 257.243(1) reinforces my conclusion:

A nonresident owner, except as otherwise provided in this section, owning any foreign vehicle of a type otherwise subject to registration under this act may operate or permit the operation of the vehicle within this state without registering the vehicle in, or paying any fees to, this state if the vehicle at all times when operated in this state is duly registered in, and *displays upon it a valid registration certificate and registration plate or plates issued for the vehicle in the place of residence of the owner.*<sup>[1]</sup> [Emphasis supplied.]

The prosecutor does not dispute that the temporary registration displayed on the pickup complied with Arizona law, and thus constituted a “valid registration certificate.” Because the pickup properly displayed its registration information in a nonobscured manner, Graves entirely lacked any legal or factual basis to stop the pickup.

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<sup>1</sup> In MCL 257.50, our Legislature defined the term “registration” as “a registration certificate, plate, adhesive tab, or other indicator of registration issued under this act for display on a vehicle.”

The Fourth Amendment prohibits “unreasonable searches and seizures,” and “its protections extend to brief investigatory stops of . . . vehicles that fall short of traditional arrest.” *United States v Arvizu*, 534 US 266, 273; 122 S Ct 744; 151 L Ed 2d 740 (2002). “An individual operating or traveling in an automobile does not lose all reasonable expectation of privacy simply because the automobile and its use are subject to government regulation.” *Delaware v Prouse*, 440 US 648, 662; 99 S Ct 1391; 59 L Ed 2d 660 (1979). A vehicle stop remains “subject to the constitutional imperative that it not be ‘unreasonable’ under the circumstances.” *Whren v United States*, 517 US 806, 810; 116 S Ct 1769; 135 L Ed 2d 89 (1996). The decision to stop a vehicle is reasonable where the officer has probable cause to believe that a traffic violation has occurred. *Id.*

The “touchstone of the Fourth Amendment is reasonableness.” *Ohio v Robinette*, 519 US 33, 39; 117 S Ct 417; 136 L Ed 2d 347 (1996) (internal quotation omitted). Although officers possess broad leeway to stop traveling vehicles, the United States Supreme Court explained in *Prouse, supra*, that absent probable cause or reasonable suspicion, the police lack the authority to stop a vehicle to inspect its registration documents:

[E]xcept 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, stopping an automobile and detaining the driver in order to check his driver’s license and the registration of the automobile are unreasonable under the Fourth Amendment. [*Id.* at 663.]

Officer Graves unreasonably believed that the pickup had failed to display a valid, unobscured registration certificate. No Michigan statute prohibits an out-of-state driver from displaying a paper registration certificate issued by another state. A police officer’s “incorrect belief that a motorist is in violation of state traffic laws is insufficient to justify a traffic stop.” *United States v Granado*, 302 F3d 421, 423 (CA 5, 2002), superseded by statute as noted in *United States v Contreras-Trevino*, 448 F3d 821, 824 (CA 5, 2006). “[I]t is well-established Fourth Amendment doctrine that the sufficiency of the claimed probable cause must be determined by considering the conduct and circumstances deemed relevant within the context of the *actual* meaning of the applicable substantive provision, rather than the officer’s claimed interpretation of that statute.” 4 LaFave, Search and Seizure (4th ed), § 9.3(a), p 361 (emphasis in original). “The Fourth Amendment does not allow a policeman to stop a car just because it has temporary tags.” *United States v Wilson*, 205 F3d 720, 724 (CA 4, 2000).

*United States v Twilley*, 222 F3d 1092 (CA 9, 2000), illustrates the principle that a traffic stop premised on a police officer’s fundamental misperception of the law lacks probable cause, and thus violates the Fourth Amendment. In *Twilley*, a California police officer noticed a Dodge Intrepid traveling on a California highway with a single Michigan license plate, located on the Intrepid’s rear. *Id.* at 1094. The officer knew that California law required vehicles to display two license plates, i.e., a front plate and a back plate, and he believed the same rule applied in Michigan. *Id.* The officer stopped the Intrepid and advised the occupants of his reason for the stop. *Id.* The driver informed the officer that Michigan issued, and thus required, only one plate. *Id.* The officer nonetheless continued to question the Intrepid’s occupants, became suspicious when they supplied conflicting responses to his questions, and eventually “began to suspect that the vehicle carried narcotics,” prompting him to call for assistance from a drug-sniffing dog. *Id.*

The dog alerted to the Intrepid's rear, and officers found cocaine in the trunk. *Id.* After the police arrested the defendant and the other occupants of the Intrepid, the district court denied the defendant's motion to suppress the cocaine, finding that the officer's mistake regarding Michigan law was "reasonable." *Id.* at 1095-1096.

The Ninth Circuit Court of Appeals reversed, holding that the officer's "belief based on a mistaken understanding of the law cannot constitute the reasonable suspicion required for a constitutional traffic stop." *Twilley, supra* at 1096. The Ninth Circuit acknowledged that a police officer "need not perfectly understand the law when he stops the vehicle," but that the officer's observation "must give him an objective basis to believe that the vehicle violates the law." *Id.* Although most states required two license plates and the officer had no experience with Michigan-registered cars, the Ninth Circuit rejected that the officer's belief that the Intrepid had violated California law qualified as "reasonable," explaining, "[H]is belief was wrong, and so cannot serve as a basis for a stop." *Id.*; see also *United States v DeGasso*, 369 F3d 1139, 1144 (CA 10, 2004) ("Trooper Cason's failure to understand the plain and unambiguous law he is charged with enforcing ... is not objectively reasonable."), and *United States v Chanthasouvat*, 342 F3d 1271, 1279 (CA 11, 2003) (holding that "a mistake of law, no matter how reasonable or understandable . . . cannot provide reasonable suspicion or probable cause to justify a traffic stop").

Michigan law is consistent with *Twilley* and the other cited federal cases. "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). In *People v Davis*, 250 Mich App 357, 363; 649 NW2d 94 (2002), this Court quoted with approval the following language from *United States v Ferguson*, 8 F3d 385, 391 (CA 6, 1993): "(S)o long as the officer has probable cause to believe the traffic violation has occurred or was occurring, the resulting stop is not unlawful and does not violate the Fourth Amendment." Because the pickup displayed a valid registration that fully complied with Michigan law, Officer Graves did not possess probable cause or reasonable suspicion to support his traffic stop.<sup>2</sup>

### III. Detention of the Vehicle After the Stop

Although I believe the absence of probable cause for the traffic stop is dispositive of this appeal, I observe that alternate grounds further support the circuit court's suppression of the evidence of weapons found inside the pickup's cab. Even assuming the existence of a reasonable basis for ticketing the pickup's driver for a license plate infraction, Officer Graves thereafter unnecessarily detained the vehicle without adequate justification.

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<sup>2</sup> Graves did not claim that he had difficulty seeing the registration after he had "closed the distance" between his cruiser and the pickup. To the extent that he could not read the registration before stopping the truck, he satisfied the purpose of the stop once he approached the truck on foot and was able to read the letters and numbers on the paper registration. Further detention after that point exceeded the scope of the stop's only permissible legal justification.

The majority recites that after the pickup's driver informed Graves that the truck bore a valid Arizona registration and Graves obtained negative LEIN information, Graves "did not believe it safe to approach the rear of the pickup to closely inspect the paper obstructing what appeared to be an out-of-state license plate before backup officers arrived." *Ante* at 2. The majority fails to explain why Graves needed to "closely inspect" the paper, given Graves's view that its mere presence constituted a legal violation. Similarly, the majority's claim that Graves "had not yet completed his investigation regarding the original basis for the stop, the obstructed license plate," lacks any factual basis. *Ante* at 7. According to Graves and the majority, the paper registration constituted an infraction. Once Graves stopped the car and identified the certificate as an out-of-state registration, he had completed all the investigation necessary to determine whether operation of the pickup amounted to a civil infraction. Further discussion regarding the offending license plate could neither have changed nor further clarified that fact. I simply cannot conceive any investigative benefit Graves would have derived from a conversation with the driver while both gazed at the rear of the vehicle. Because the purpose of the stop had been satisfied once Graves inaccurately concluded that the truck's displayed registration violated Michigan law, Graves's subsequent detention of the vehicle to "request[] the driver exit to view the infraction leading to the traffic stop" far exceeded the scope of the stop's underlying justification.<sup>3</sup> *Ante* at 2.

"[A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop. . . . [and] . . . the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time." *Florida v Royer*, 460 US 491, 500; 103 S Ct 1319; 75 L Ed 2d 229 (1983). The scope of a motorist's detention "must be carefully tailored to its underlying justification." *Id.* To detain a driver any longer than reasonably necessary to issue a traffic citation, a police officer must possess a reasonable suspicion that the motorist "has engaged in more extensive criminal conduct." *United States v Townsend*, 305 F3d 537, 541 (CA 6, 2002). "Once the purpose of the traffic stop is completed, a motorist cannot be further detained unless something that occurred during the stop caused the officer to have a reasonable and articulable suspicion that criminal activity was afoot." *United States v Hill*, 195 F3d 258, 264 (CA 6, 1999). In *People v Burrell*, 417 Mich 439, 441; 339 NW2d 403 (1983), our Supreme Court held that "a person may not be detained for roadside questioning beyond the scope of a stop, absent at least an articulable basis for suspecting other criminal activity."

The majority describes the "articulable basis" as, "Calvin [the driver] appeared nervous, made no eye contact, and was 'fumbling' around inside of the vehicle." *Ante* at 1-2. The majority further observes that Calvin stated that he was "passing through" Battle Creek on his way to Arizona, yet Graves could see no luggage in the truck. *Ante* at 2. "Reasonable suspicion

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<sup>3</sup> To the extent that the majority derives probable cause for continued detention from the driver's failure to provide the pickup's registration and proof of insurance, I disagree. MCL 257.216(a), exempts "nonresidents" from Michigan's registration and certificate of title provisions. The pickup's nonresident driver had no duty to carry a separate vehicle registration or proof of insurance.

is more than an ill-defined hunch; it must be based upon ‘a particularized and objective basis for suspecting the particular person ... of criminal activity.’” *Houston v Clark Co Sheriff Deputy John Does 1-5*, 174 F3d 809, 813 (CA 6, 1999), quoting *United States v Cortez*, 449 US 411, 417-418; 101 S Ct 690; 66 L Ed 2d 621 (1981). Although nervousness may comprise a part of the overall circumstances giving rise to a reasonable suspicion of criminal activity, most reviewing courts have concluded that a motorist’s apparent nervousness does not justify detention for reasons other than those supporting the original stop. “[O]ur case law ... indicates [that] . . . nervousness, lack of eye contact, the authorized driver not being present, and some inconsistent responses to detailed travel questions . . . are insufficient to support reasonable suspicion of drug trafficking.” *United States v Brigham*, 382 F3d 500, 517 (CA 5, 2004). “It is simply not reasonable to infer that a driver is armed and dangerous because the officers believe that he appears nervous and reaches toward the car’s console when approached by police, even in a high-crime neighborhood.” *United States v McKoy*, 428 F3d 38, 41 (CA 1, 2005). In *United States v Salzano*, 158 F3d 1107, 1113 (CA 10, 1998), the Tenth Circuit explained that “we have repeatedly held that nervousness is of limited significance in determining reasonable suspicion,” and, “absent signs of nervousness beyond the norm, we will discount the detaining officer’s reliance on the detainee’s nervousness as a basis for reasonable suspicion.” (Internal quotation omitted). “Conduct typical of a broad category of innocent people provides a weak basis for suspicion.” *United States v Green*, 52 F3d 194, 198 (CA 8, 1995).

In determining whether a police officer acted reasonably, “due weight must be given, not to his inchoate and unparticularized suspicion or ‘hunch,’ but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience.” *Terry v Ohio*, 392 US 1, 27; 88 S Ct 1868; 20 L Ed 2d 889 (1968). To justify a *Terry* stop or to detain a vehicle’s occupants, a police officer must “be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Id.* at 21. In *United States v Tapia*, 912 F2d 1367, 1368 (CA 11, 1990), Alabama police officers stopped the defendant’s car because he was speeding. An officer testified that during a discussion with the defendant and the car’s passenger, the defendant “seemed nervous,” his hands shook, and the car contained limited luggage, in contravention of the passenger’s claim that he and the driver were relocating to Georgia to search for employment. *Id.* at 1369. The Eleventh Circuit rejected that these facts justified the officer’s detention of the vehicle beyond the time necessary to ticket the driver for speeding:

Nevertheless, we find that the factors cited by the district court in this case, e.g. being Mexican, having few pieces of luggage, being visibly nervous or shaken during a confrontation with a state trooper, or traveling on the interstate with Texas license plates (not yet a crime in Alabama), do not provide a minimal, particularized basis for a conclusion of reasonable suspicion on the part of Officer Guthrie. Even when considered together and in light of all the facts, such observations fail to suggest that appellant and his brother were engaged in any criminal activity other than speeding on the highway. Neither, for that matter, do any of the other allegedly “suspicious” facts urged by the government, such as Arturo Tapia’s looking away quickly as he passed the officer on the highway, the Tapias’ possessing valid San Antonio driver’s licenses, or the bare fact of the car being insured by a third party. [*Id.* at 1371.]

In my view, Calvin's nervousness, avoidance of eye contact, and his "fumbl[ing]" for the requested paperwork did not supply Graves with any particularized basis to suspect Calvin of criminal wrongdoing. These facts, even when combined with the absence of luggage and the out-of-state registration, do not collectively give rise to a reasonable suspicion of illegal activity. In *United States v Smith*, 263 F3d 571, 594 (CA 6, 2001), the Sixth Circuit quoted approvingly as follows from *Karnes v Skrutski*, 62 F3d 485, 496 (CA 3, 1995):

It is possible for factors, although insufficient individually, to add up to a reasonable suspicion—that is the nature of the totality of the circumstances test. But we think it impossible for a combination of wholly innocent factors to combine into a suspicious conglomeration unless there are concrete reasons for such an interpretation.

The factors relied on by the majority to support Graves's detention of the pickup all qualify as innocent. When evaluated under the requisite totality of the circumstances analysis, they may create an inference of a nervous and unhappy driver who did not accurately describe his travel plans, but they do not give rise to a reasonable, articulable inference of criminal wrongdoing. In my view, these facts are simply too common and too devoid of suspicion to justify ordering a motorist to leave his vehicle for further questioning.

Here, Graves lacked any objectively reasonable suspicion that the driver of the pickup or any of the passengers was engaged in criminal activity. That the detention occurred only briefly does not transform Graves's inchoate suspicions into reasonable ones. "[L]aw enforcement does not get a free pass to extend a lawful detention into an unlawful one simply because the unlawful extension was brief." *United States v Urrieta*, 520 F3d 569, 579 (CA 6, 2008).

The illegal detention of the vehicle, either initially or after Graves verified the presence of the out-of-state registration, tainted Calvin's later confession regarding the guns in the pickup's cab. Because Graves obtained Calvin's statement by "exploitation of th[e] illegality" surrounding his detention, the circuit court properly suppressed his statement as the fruit of the pickup's unlawful detention. *Wong Sun v United States*, 371 US 471, 484, 487-488; 83 S Ct 407; 9 L Ed 2d 441 (1963). Therefore, I would affirm the circuit court's suppression order.

/s/ Elizabeth L. Gleicher