

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ANTHONY KEITH WILLIAMS,

Defendant-Appellee.

UNPUBLISHED

August 6, 2009

No. 282100

Oakland Circuit Court

LC No. 2006-212089-FH

Before: Zahra, P.J., and O'Connell and Fort Hood, JJ.

PER CURIAM.

Defendant was charged with possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv). He filed a motion to suppress the evidence, arguing that the police lacked probable cause to conduct the traffic stop that led to the discovery of the cocaine. The trial court agreed, granted defendant's motion, and dismissed the charge. The prosecution appeals as of right, asserting that defendant's failure to use his turn signal before changing lanes provided probable cause for the traffic stop. We reverse. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On November 21, 2006, at approximately 10:30 p.m., Police Officer Harshberger noticed a car on Telegraph Road with a license plate from another state. He was unable to run a check on the plate because a frame surrounding the plate partially obscured the name of the issuing state. When he moved his marked patrol vehicle closer, the car turned right onto Franklin Road in a manner that led the officer to believe that the driver was attempting to evade him. The officer positioned his vehicle at the next intersection and shortly thereafter saw the car resume travel on Telegraph Road. Officer Harshberger began following the car, but still could not see the state on the license plate. He initiated a traffic stop for further investigation. Defendant stopped his car and ultimately consented to a search of the vehicle during which two baggies of cocaine were found.

Officer Harshberger's vehicle was equipped with an in-car video recording system. The preliminary examination was adjourned to allow the prosecutor to present the video recording of the stop. Defense counsel protested the bindover by alleging that the officer did not have a valid basis for the stop because the issuing state on the license plate was clearly visible. The district judge went to the parking lot and examined the license plate on the vehicle that was allegedly unchanged since the time of the stop. The district court bound defendant over on the possession with the intent to deliver charge, concluding that the videotape was inconclusive regarding any

obstruction and the court's viewing of the license plate in broad daylight did not mirror the conditions as observed by Officer Harshberger.

Defendant moved to suppress the evidence by challenging the stop in circuit court, and an evidentiary hearing was held. After the prosecutor played the tape of the incident at the evidentiary hearing for the first time, the prosecutor replayed a portion of the tape and directed the officer's attention to the vehicle as it changed lanes before turning onto Franklin Road. The prosecutor inquired if the turn signal was used. As the tape was replayed, the officer responded, "No." On cross-examination, the officer agreed that he had testified at the preliminary examination that the reason for pulling over the vehicle was that he could not read the state on the license plate, and that he did not mention that any other traffic citation played a role in his decision.

At the evidentiary hearing, the prosecutor asserted three bases for the stop and noted that one of the bases was "the fact that the Defendant committed a civil infraction when he changed lanes without a signal, as you saw on Telegraph." As a second basis, the prosecutor noted the violation of MCL 257.225, because the license plate frame partially obscured the registration information. Third, the prosecutor argued that the officer had a reasonable belief that criminal activity was afoot because of defendant's apparent attempts to evade the police. The trial court rejected each of these proposed grounds, but only the court's rejection of the first ground is challenged on appeal. With respect to that first ground, the trial court concluded that the prosecutor's argument was without merit, reasoning:

The officer candidly and honestly testified he stopped the vehicle based upon the license plate frame. It is improper to attempt to justify the stop for any other reason. Simply stated, the officer admittedly did not have a reasonable suspicion that Defendant had made an improper lane change and the Court cannot place thoughts into the officer's mind.

On appeal, the prosecution argues that the undisputed evidence established that Officer Harshberger had a lawful basis to stop defendant's vehicle for failing to use a turn signal when changing lanes and that the officer's subjective motivation is irrelevant.

A lower court's factual findings following a suppression hearing are reviewed for clear error, but the trial court's ultimate ruling is reviewed de novo. *People v John Lavell Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005). "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 Matthew Jevon Williams*, 236 Mich App 610, 612; 601 NW2d 138 (1999). A traffic stop is permissible when an officer has probable cause to believe that a traffic violation has occurred or was occurring. *People v Marcus Davis*, 250 Mich App 357, 362; 649 NW2d 94 (2002). Therefore, upon "reasonable grounds shown, a police officer may stop and inspect a motor vehicle for an equipment violation." *Matthew Jevon Williams, supra*. Additionally, "[a] police officer who witnesses a civil infraction may stop and temporarily detain the person, for the purpose of issuing a written citation." *People v Chapo*, 283 Mich App 360, 366; ___ NW2d ___ (2009). An actual violation of the vehicle code need not be proven. Rather, the officer's reasonable impression that a violation may have occurred is the dispositive question. *People v Fisher*, 463 Mich 881, 882; 617 NW2d 37 (2000) (Corrigan, J.).

A traffic violation or civil infraction provides sufficient cause to justify the stop of a vehicle. *People v Kazmierczak*, 461 Mich 411, 420 n 8; 605 NW2d 667 (2000). However, the constitution requires an individualized, articulable suspicion to conduct a stop in the absence of a traffic or equipment violation. *People v Burrell*, 417 Mich 439, 450; 339 NW2d 403 (1983). A stop may not be utilized as a pretext to search for evidence of another offense. *People v Haney*, 192 Mich App 207, 209; 480 NW2d 322 (1991). When police lack reasonable suspicion to support a stop, the stop is a mere pretext, and evidence derived from the search made incident to the stop or arrest is suppressed. *Id.* at 209-210. The constitutional reasonableness of a stop does not depend upon the actual motivations of the police officer involved. *Whren v United States*, 517 US 806, 813; 116 S Ct 1769; 135 L Ed 2d 89 (1996); *People v Oliver*, 464 Mich 184, 200; 627 NW2d 297 (2001).

In the present case, the police officer conducted a traffic stop because, in his view from the patrol car at 10:30 p.m., the license plate was obstructed.¹ However, the officer also noted that when he was attempting to view the plate, the vehicle “abruptly” changed lanes off of Telegraph Road. This abrupt turn as recorded on the videotape demonstrated that a civil infraction occurred because defendant turned his vehicle off the roadway without using his turn signal, MCL 257.648. The circuit court held that the officer could not utilize another civil infraction as a basis for the stop when he originally relied on a potential license plate infraction. “The fact that the officer did not cite that as a basis for the stop is immaterial.”² It is undisputed that defendant committed a different civil infraction while the police officer was in the process of investigating another potential civil infraction. The fact that the officer’s actual motivation involved investigation of the potentially improper plate does not impact the reasonableness of the stop particularly in light of the other civil infraction. *Whren, supra*. Therefore, the police officer properly stopped the automobile for violation of a civil infraction, MCL 257.648, as preserved on the videotape. Consequently, defendant was not unlawfully detained when asked for his consent to search, and consent was not challenged by the defense. *Williams, supra* at 317-318.

Reversed.

/s/ Karen M. Fort Hood

¹ We note that, in district court, the judge did not make any finding regarding the officer’s credibility. Similarly, the circuit court did not render an opinion regarding the officer’s view of the vehicle. Review of the videotape reveals that the rear lights on defendant’s vehicle preclude the viewer from seeing the plate itself or from determining any obstruction.

² *People v Roderick*, unpublished memorandum opinion of the Court of Appeals, issued March 21, 2006 (Docket No. 258931). Although this unpublished decision is not binding precedent, MCR 7.215(1), this conclusion is applicable and persuasive, and we adopt it.