STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED November 3, 2009
v	No. 280631 Monroe Circuit Court
DANNY G. PHILLIPS, Defendant-Appellee.	LC No. 07-036156-FH

Before: Stephens, P.J., and Cavanagh and Owens, JJ.

PER CURIAM.

The Monroe County Prosecutor appeals of right from the circuit court's decision to suppress evidence found by police in a search of defendant's vehicle and to dismiss the charge of possession with intent to deliver methylenedioxymethamphetamine (commonly known as "Ecstasy" or MDMA), MCL 333.7401(2)(b)(i). We affirm.

A Michigan State Police trooper stopped defendant's vehicle because it had two air fresheners hanging from the rearview mirror in violation of MCL 257.709(1)(c). The trooper determined that defendant's two passengers had outstanding warrants and they were placed under arrest.[1] He then conducted a search of the vehicle incident to the arrests. In a hidden compartment, he found a white athletic sock containing ten clear baggies with 906 multi-colored pills of Ecstasy. Defendant gave a statement to the police in which he admitted driving to Detroit with another man to purchase Ecstasy, being given 100 pills in return for doing so, and intending to sell the 100 pills for $10 each when he returned to Cincinnati.

At the preliminary examination, defendant moved to suppress the drug evidence on the ground that the trooper lacked probable cause to stop his vehicle. Defendant's vehicle was licensed in Ohio and he pointed out that the statute contained an express exemption precluding its application to vehicles registered in another state. MCL 257.709(3)(d). Defendant also cited an unpublished federal case, *United States v Acuna-Payan*, unpublished opinion of the United

[1] The trooper testified that the front seat passenger had a felony warrant from Cincinnati and the backseat passenger also had an arrest warrant and that he arrested both passengers. However, the prosecutor than asked, "Okay. And after you had taken the one person into custody then what did you do?" This apparent discrepancy was not cleared up.

States District Court for the Western District of Michigan, issued May 23, 2006 (Docket No. 1:05-CR-291), that held that the police lacked probable cause to stop an out-of-state vehicle with a crucifix hanging from the rearview mirror. Defendant argued that the police were not justified in stopping every out-of-state vehicle they observed with some ornament obscuring a portion of the windshield merely to confirm that the vehicle was validly registered. The district court denied defendant's motion and bound the case over for trial.

Defendant renewed his motion in the circuit court. The circuit court granted defendant's motion after ruling that the police had "no probable cause to stop this vehicle" because the exception in MCL 257.709(3)(d) precluded application of the statute to cars registered in other states. The prosecution has appealed the circuit court's ruling.

This Court reviews a trial court's[2] findings of fact from a suppression hearing for clear error. *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005). However, "the application of constitutional standards regarding searches and seizures to essentially uncontested facts is entitled to less deference; for this reason, we review de novo the trial court's ultimate ruling on the motion to suppress." *Id.*, citing *People v Jenkins*, 472 Mich 26, 31; 691 NW2d 759 (2005) and *People v Oliver*, 464 Mich 184, 191-192; 627 NW2d 297 (2001).

MCL 257.709 provides in relevant part:

> (1) A person shall not drive a motor vehicle with any of the following:
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> * * *
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> (c) A dangling ornament or other suspended object that obstructs the vision of the driver of the vehicle, except as authorized by law.

However, an exception to this prohibition is provided in MCL 257.709(3)(d):

> (3) This section shall not apply to:
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> * * *
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> (d) A vehicle registered in another state, territory, commonwealth of the United States, or another country or province.

This Court's responsibility when interpreting statutory language is to discern the intent of the Legislature and the language of the statute generally reveals that legislative intent. *People v Lowe*, 484 Mich 718, 721-722; __ NW2d __ (2009). Where "the language of the statute is plain

[2] Here the trial court was the circuit court. However, the actual suppression hearing occurred in the district court and the proceedings in the trial court were more in the nature of an appeal without a new evidentiary hearing being conducted. It appears, though, that the facts developed at the district court suppression hearing were uncontested by the parties, and the circuit court engaged in no additional fact-finding. Therefore, we conclude that de novo review of the circuit court's ruling is appropriate.

and unambiguous, we enforce the statute as written and follow its plain meaning, giving effect to the words used by the Legislature." *People v Barbee*, 470 Mich 283, 286; 681 NW2d 348 (2004), citing *In re MCI*, 460 Mich 396, 411; 596 NW2d 164 (1999). The language of this statute is plain: the prohibitions of § 709(1) do not apply to out-of-state vehicles. This Court is therefore required to apply the statute as written.

The stop of a motor vehicle must be based on reasonable suspicion that the driver or the passenger(s) are involved in criminal activity.[3] *People v Whalen*, 390 Mich 672, 682; 213 NW2d 116 (1973); *People v Yeoman*, 218 Mich App 406; 554 NW2d 577 (1996). The trooper's *only* reason for stopping defendant's vehicle was his observation that it had two air fresheners hanging from the rear view mirror. While that might suffice under the statute to support the stop of a Michigan vehicle, defendant's vehicle displayed an Ohio license plate. Therefore, the only reasonable conclusion would have been that the out-of-state vehicle was exempt from the ambit of the statute.

The prosecution argues that the police had the right to stop the vehicle to see if it was validly registered, analogizing the vehicle stop to the right the police would have to demand identification in a bar to verify that an individual was over twenty-one years old. However, that right is based upon the officer's view of a particular subject and a reasonable suspicion that the person was underage. In this case the officers offered no testimony regarding any irregularity in the appearance of the plate. If anything, the regular appearance of the plate gave rise to reasonable suspicion of validity, and, therefore, the inapplicability of MCL 257.709.

Defendant relies on two unpublished decisions. While unpublished decisions are not precedentially binding authority, MCR 7.215(C)(1), they may be persuasive. See: *People v Christopher Green*, 260 Mich App 710, 720 n 5; 680 NW2d 477 (2004). We find these decisions on point and their analyses persuasive.

In *People v Gales*, unpublished opinion per curiam of the Court of Appeals, issued June 14, 2007 (Docket No. 269803), the defendant was stopped by the police because his vehicle was driving in the left (or "fast") lane of I-75 and it violated the "window-tint" provision of MCL 257.709(1)(a). A search of the vehicle disclosed quantities of heroin and marijuana. The trial court granted a suppression motion and dismissed the controlled substance charges, which the prosecutor appealed. This Court affirmed the dismissal, holding that the defendant did not violate the statute that prohibited driving in the left lane except to pass. This Court also held that, while the defendant's car did not comply with the statutory window-tinting regulations, those regulations were not applicable because the car was from another state. This Court stated:

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[3] To the extent that the circuit court indicated that probable cause was required to *stop* defendant's vehicle, the court erred. Probable cause is generally required to justify the *search* of the vehicle. *People v Levine*, 461 Mich 172, 185-186; 600 NW2d 622 (1999). In this case, the prosecutor claimed that probable cause was unnecessary to justify the search because it was conducted under the "search incident to arrest" exception to the warrant requirement. Under the United States Supreme Court's recent ruling in *Arizona v Gant*, 566 US __; 129 S Ct 1710; 173 L Ed 2d 485 (2009), it is questionable that this exception would apply. However, this issue was not raised or considered below, and, given our disposition of this case, it is unnecessary for us to resolve it on appeal.

> Apparently it is not disputed that defendant's car did not comply with window-tinting regulations imposed on Michigan vehicles. However, vehicles registered in another state are not subject to those regulations. MCL 257.709(3)(d). The prosecutor admits that defendant's car had an out-of-state license plate on it, but contends that a stop was appropriate to make sure the vehicle was properly registered in another state. But there is no evidence to indicate that the officer had any reason to believe that the displayed license plate was invalid. He had not run a LEIN check before he initiated the stop and did not identify any defect or irregularity suggesting that the plate was not valid. Therefore, the tinting, which would constitute a violation of § 709 for a vehicle registered in Michigan, did not create probable cause for stopping a vehicle registered in another state. [Opinion at p 2.]

The instant case is, in all relevant respects, identical to the *Gales* case. The only reason offered for stopping defendant's car was the fact that air fresheners were hanging from the rearview mirror in violation of the statutory prohibition. However, because defendant's vehicle was from Ohio, it was exempt from the statute. There is no indication the trooper ran a LEIN check and determined defendant's vehicle was not properly registered before he stopped it. Therefore, the plain language of the statute, and the analysis of the *Gales* decision, clearly forbade the vehicle stop.

Similarly, in *United States v Acuna-Payan*, unpublished opinion of the United States District Court for the Western District of Michigan, issued May 23, 2006 (Docket No. 1:05-CR-291), a police officer stopped the defendant's car, which had an Illinois license plate, because it had a crucifix and beads hanging from the rearview mirror in apparent violation of MCL 257.709(1)(c). The federal district court ruled that the vehicle stop was invalid because the statute does not apply to an out-of-state vehicle.

We hold that these two unpublished decisions have correctly applied the plain language of the statute to their respective facts. The salient facts are identical to this case: the police stopped out-of-state vehicles based solely on the apparent violation of a statute that, by its own terms, does not apply to out-of-state vehicles. No other justification for the stops was offered. Therefore, the statutory exemption clearly applied and served to invalidate the vehicle stops. Applying the same logic to this case, there was no basis to support the stop of defendant's vehicle, and the district court clearly erred by upholding the stop. The circuit court's ruling reversing the district court and dismissing the charge against defendant was proper.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Mark J. Cavanagh
/s/ Donald S. Owens