

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

RICKY AARON SIMS,

Defendant-Appellee.

UNPUBLISHED
December 1, 2009

No. 287050
Wayne Circuit Court
LC No. 08-002379-FH

Before: Murphy, P.J., and Meter and Beckering, JJ.

PER CURIAM.

The prosecutor appeals as of right from a circuit court order granting defendant's motion to suppress evidence discovered after the police stopped defendant's vehicle for speeding. The trial court concluded that the stop was not supported by probable cause. We reverse and remand.

While driving westbound on Seven Mile Road in Wayne County at approximately 3:00 a.m., police officer Henry Starks noticed a vehicle traveling eastbound at a high rate of speed. Officer Starks turned the police vehicle around and pursued the car for approximately 90 seconds before catching up to it. When asked, "[W]hat was your speed to catch up with him?" Officer Starks testified, "At least 60, 70, I had -- I had to halt [sic] it." However, he was unable to recall whether his speed ever stabilized during the pursuit. After the car made a left turn, it stopped, and Officer Starks approached. Defendant lowered the window and produced his license and proof of insurance as requested. Officer Starks detected a strong odor of marijuana coming from the vehicle. Officer Starks's partner held up a bag of suspected marijuana, which he discovered on the passenger side. After defendant was ordered out of the vehicle and was arrested, Officer Starks conducted an inventory search of the vehicle and found a loaded .357 handgun under the front passenger seat. He did not issue a ticket for speeding.

Defendant was charged with possession of marijuana, MCL 333.7403(2)(d), and carrying a concealed weapon, MCL 750.227. He moved to suppress the evidence and argued in part that he was stopped without probable cause that he had committed or was committing any offense. He waived his right to a jury trial, and the parties agreed that the evidentiary hearing on the motion and waiver trial would be based on the same proofs.

The trial court determined that there was no probable cause to stop the vehicle for speeding because the officer "never got a pace on him." In explaining the decision, the court noted that the officer "couldn't tell me how fast he was going . . . he couldn't tell me the speed . .

. on his own vehicle.” The court noted that defendant would have had to slow down to make the left turn, and “[i]t leaves guess work as to whether or not by the time he [Officer Starks] caught up with him, he included the turn, the left turn North on [Conant]. So, this Court is of the opinion that the stop was unlawful because he did not establish whether or not in fact this man was speeding.”

The prosecution contends that the officer’s stop did not violate the Fourth Amendment because the officer had probable cause to believe that a traffic violation had occurred inasmuch as the officer saw defendant speeding. The prosecution contends that the court clearly erred in finding that the officer had not testified regarding his own speed in attempting to catch up to defendant.

This Court reviews a trial court’s findings at a suppression hearing for clear error. . . . But 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. [*People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005).]

If an officer has probable cause to believe that a traffic violation has occurred or was occurring, the resulting stop is reasonable and does not violate the Fourth Amendment. *People v Marcus Davis*, 250 Mich App 357, 363; 649 NW2d 94 (2002); *People v Williams*, 472 Mich 308, 314-315; 696 NW2d 636 (2005); *Whren v United States*, 517 US 806, 810; 116 S Ct 1769; 135 L Ed 2d 89 (1996). “Probable cause requires a quantum of evidence ‘sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief’ of the accused’s guilt.” *People v Yost*, 468 Mich 122, 126; 659 NW2d 604 (2003), quoting *People v Justice (After Remand)*, 454 Mich 334, 344; 562 NW2d 652 (1997).

In the present case, the trial court incorrectly focused on whether the prosecution had “established” that defendant was speeding when the pertinent issue for the purposes of assessing the legality of the stop was whether the evidence was sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief that defendant had been speeding. Officer Starks acknowledged that he did not “get a pace” on defendant, but he testified that he knew defendant was going fast from his “experience of seeing cars, you just have an idea how fast one is traveling.” He had been an officer for almost seven years. The court stated that the officer “stopped him for speeding which I believe he did,” and noted that the officer “saw this car flying by.” In addition, the court found that the officer was “honest about everything.” The court’s conclusion that the officer lacked probable cause because he did not pace defendant’s vehicle confused the probable cause standard with the higher level of certainty required to obtain a conviction for speeding. A speed-measurement device or pacing is not necessary to establish probable cause for the stop; the officer’s visual observation of defendant traveling at a high rate of speed is adequate. See *State v Allen*, 978 So 2d 254 (Fla App, 2008), and cases cited therein. Contrary to the trial court’s decision, the stop in this case did not violate the Fourth Amendment, and, therefore, the trial court erred in suppressing the evidence on this basis.

Reversed and remanded. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ Patrick M. Meter

/s/ Jane M. Beckering