

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTIAN HAROLD BOYD,

Defendant-Appellant.

UNPUBLISHED

April 20, 2010

No. 289045

Kent Circuit Court

LC No. 07-008047-FH

Before: SERVITTO, P.J., and FITZGERALD and BECKERING, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of possession with intent to deliver 50 grams or more but less than 450 grams of cocaine, MCL 333.7401(2)(a)(iii), and was sentenced to a prison term of three to 20 years. Defendant appeals as of right, challenging the trial court's denial of his motion to suppress evidence. We affirm.

On June 26, 2007, State Police Trooper Christopher Bush was working as a canine officer assigned to a drug investigation along I-96. Shortly before 7:00 a.m., he received a call from Detective Sergeant Andy Fias advising that a tip indicated that a black Escalade was coming from Detroit, bringing cocaine and marijuana. Fias gave a plate number and told Bush to make a stop on the vehicle. Bush set up at the Lowell exit on I-96. Within a short time, he saw the Escalade come under the overpass. As the Escalade moved from the left lane of traffic into the right lane, it crossed all the way over the fog line. Bush made a traffic stop and defendant immediately pulled over. As defendant was looking for his registration and insurance, Bush noticed that defendant's hand was "shaking noticeably." When Bush advised defendant of the reason for the traffic stop, defendant stated that he swerved to avoid an animal in the road. According to Muskegon Police Detective Sergeant Timothy Lewkowski, he observed the Escalade lurch into the right lane and go over the fog line. There was no animal carcass in the road where defendant went over the fog line.¹

¹ According to Lewkowski, just east of the Lowell exit the Escalade swerved at a point where there was an animal carcass in the roadway. But when the Escalade swerved over the fog line the second time, there was no animal carcass in the roadway.

Defendant denied having anything illegal in the vehicle, and denied Bush's request to search the vehicle. Sergeant Karl Schmitz arrived as Bush was having defendant step out of the vehicle. During a pat down search for weapons, Bush felt a bulge in defendant's front pocket that he recognized, from his experience as a narcotics officer, as a large wad of cash. Defendant indicated that the wad contained \$2,000. Bush then turned defendant over to Schmitz, retrieved the dog from his vehicle, and took the dog to the Escalade. Starting at the front passenger side, the dog alerted to the odor of narcotics near the door. As they came around the driver's side, the dog alerted from the front rocker panel under the driver's door back to the rear tire. The dog sniffed this area for about 30 seconds. They then went around to the passenger side. The window was down, and the dog gave a head snap, jumped up, put his paws on the door, and sniffed into the vehicle. The dog then sat down. According to Bush, this sequence indicated the presence of drugs.

Schmitz and Bush then searched the vehicle while another officer stayed with defendant. The officers did not find any drugs in the passenger compartment. The officers observed two compartments in the trunk bed that were "like coolers on the quarter panel." One of the compartments was on the driver side and was locked. Bush retrieved the keys from the ignition and unlocked this compartment. Inside he found a plastic grocery bag, tied up, containing what felt to be narcotics inside. No drugs were found in the closed compartment on the passenger side. A laboratory analysis of the narcotics revealed 373.28 grams of cocaine in powder form.

The circuit court denied defendant's motion to suppress the evidence, finding that the officer initiated a valid traffic stop for a civil infraction, and that the officer had reasonable suspicion and probable cause to search the vehicle. Defendant now argues that the trial court erred by refusing to suppress the evidence. We review a trial court's factual findings on a motion to suppress evidence for clear error, but review de novo the trial court's conclusions of law and ultimate decision regarding whether to suppress the evidence. *People v Murphy (On Remand)*, 282 Mich App 571, 584; 766 NW2d 303 (2009).

THE TRAFFIC STOP

An officer may stop a vehicle if he has probable cause to believe that a traffic violation has occurred or was occurring. *People v Davis*, 250 Mich App 357, 363; 649 NW2d 94 (2002); *Whren v United States*, 517 US 806, 810; 116 S Ct 1769; 135 L Ed 2d 89 (1996). An actual violation of the vehicle code need not be proved; all that is required is that the officer has a reasonable suspicion that a violation may have occurred. *People v Peebles*, 216 Mich App 661, 666-667; 550 NW2d 589 (1996).

Pursuant to MCL 257.642(1)(a), when a road is divided into two or more clearly marked lanes, "a vehicle shall be driven as nearly as practicable entirely within a single lane." Here, a traffic stop was permissible because Bush observed the traffic violation. *People v Kazmierczak*, 461 Mich 411, 420 n 8; 605 NW2d 667 (2000). The traffic stop was lawful because driving outside a traffic lane constituted a traffic violation. *Whren v United States*, 517 US 806, 814-815; 116 S Ct 1769; 135 L Ed 2d 89 (1996); *People v Haney*, 192 Mich App 207, 210; 480 NW2d 322 (1991).

THE CANINE SNIFF

As long as a traffic stop is not prolonged unnecessarily, police may use a trained dog to sniff the vehicle, even with no reasonable articulable suspicion of narcotics. *Illinois v Caballes*, 543 US 405, 407, 409; 125 S Ct 834; 160 L Ed 2d 842 (2005); *People v Jones*, 279 Mich App 86, 91-95; 755 NW2d 224 (2008). A positive reaction by a trained canine can establish probable cause. *Jones*, 279 Mich App at 90 n 2. A dog alert is “at least as reliable as many other sources of probable cause and is certainly reliable enough to create a ‘fair probability that there is contraband.’” *United States v Ludwig*, 10 F 3d 1523, 1527 (CA 10, 1993). As there was no illegal conduct by the police in stopping defendant, and there was no unreasonable delay or prolonged detention before Bush walked the dog around the vehicle, use of the dog was appropriate. The dog’s alert provided probable cause to justify the search of the vehicle.

Defendant asserts that the search of the vehicle was invalid because the dog “hit” on the passenger compartment and not the locked box where the cocaine was found. However, once police have probable cause to search a vehicle, the search may extend to closed containers in the vehicle and any part of the vehicle. *Wyoming v Houghton*, 526 US 295, 301; 119 S Ct 1297; 143 L Ed 2d 408 (1999); *People v Clark*, 220 Mich App 240, 243-244; 559 NW2d 78 (1996). The dog’s alert on the vehicle gave police probable cause to search all parts of the vehicle.

Affirmed.

/s/ Deborah A. Servitto
/s/ E. Thomas Fitzgerald
/s/ Jane M. Beckering