

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

TAMIKA MICHELLE HATTER,

Defendant-Appellee.

UNPUBLISHED

November 16, 2010

No. 292663

Genesee Circuit Court

LC No. 09-024330-FH

Before: SERVITTO, P.J., and ZAHRA and DONOFRIO, JJ.

PER CURIAM.

The prosecution appeals as of right the trial court's order granting defendant's motion to suppress evidence and dismissing the charges against defendant. Because the trial court erred when it granted defendant's motion to suppress evidence of heroin and cocaine seized from defendant following a traffic stop for which there was probable cause, we reverse and remand for reinstatement of the information.

I

On April 16, 2008, undercover law enforcement officers from the Flint Area Narcotics Group (FANG) surveilled defendant. The FANG officers placed defendant under surveillance after receiving a tip from a confidential informant that defendant was in possession of heroin and would be delivering it to a person in Grand Blanc Township. During the surveillance, defendant was driving on the highway when one of the surveilling FANG officers determined that her speed was approximately seven miles per hour over the posted speed limit. Based on defendant's speeding violation, the FANG officer radioed ahead to Grand Blanc Township police to request a stop by a uniformed police officer in a marked cruiser. However, before the uniformed officer could execute the traffic stop, defendant exited the highway and stopped at a nearby hotel. FANG officers continued surveillance and defendant eventually exited the hotel, returned to her vehicle, and proceeded to drive. FANG officers radioed an updated location to the Grand Blanc Township police. A uniformed Grand Blanc township officer proceeded to stop defendant's vehicle. The officer asked her to step out of the vehicle and requested permission to search defendant's person. Defendant consented and the officer found at least one bag of heroin. The officer placed defendant under arrest. FANG officers subsequently discovered another bag containing cocaine during a search of her vehicle.

The prosecutor charged defendant with possession with intent to deliver less than 50 grams of a mixture containing heroin, MCL 333.7401(2)(a)(iv), and possession of less than 25 grams of a mixture containing cocaine, MCL 333.7403(2)(a)(v). Defendant moved to suppress evidence of the drugs arguing that police improperly obtained the evidence because the officer who effectuated the stop did not actually see the traffic violation as required by Michigan law, MCL 257.742(1). After a hearing on the motion, the trial court agreed, suppressed the evidence, and dismissed the charges against defendant. The prosecution now appeals, arguing that although MCL 257.742(1) states that only an officer who witnesses a traffic violation may execute the traffic stop, under the “police team theory,” an officer who witnessed a traffic violation can relay information about the violation to another officer who performs the actual stop.

II

On appeal from an order suppressing evidence, we review for clear error a trial court’s findings of fact. *People v Hyde*, 285 Mich App 428, 436; 775 NW2d 833 (2009). A factual finding is clearly erroneous when, “although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made.” *People v Lanzo Const Co*, 272 Mich App 470, 473; 726 NW2d 746 (2006). We review de novo determinations of whether the Fourth Amendment was violated, whether an exclusionary rule applied, and the trial court’s ultimate decision on a motion to suppress. *Hyde*, 285 Mich App at 436.

III

In order to effectuate a valid traffic stop a police officer must possess an “articulable and reasonable suspicion that a vehicle or one of its occupants is subject to a seizure for a violation of law.” *People v Williams*, 236 Mich App 610, 612; 601 NW2d 138 (1999). Further, a warrantless traffic stop is permissible when a police officer has probable cause to believe that a traffic violation has occurred. *People v Davis*, 250 Mich App 357, 363; 649 NW2d 94 (2002). The existence of probable cause depends on the totality of the circumstances of each case. *United States v Arvizu*, 534 US 266, 273; 122 S Ct 744; 151 L Ed 2d 740 (2002). Probable cause to search exists when facts and circumstances warrant a reasonably prudent person to believe that a crime has been or is being committed and that the evidence sought will be found in a stated place. Whether probable cause exists depends on the information known to the officers at the time of the search. *People v Beuschlein*, 245 Mich App 744, 750; 630 NW2d 921 (2001); *People v Brzezinski*, 243 Mich App 431, 433; 622 NW2d 528 (2000).

MCL 257.742(1) governs traffic stops for civil infractions and provides in pertinent part:

A police officer who witnesses a person violating this act or a local ordinance substantially corresponding to this act, which violation is a civil infraction, may stop the person, detain the person temporarily for purposes of making a record of vehicle check, and prepare and subscribe, as soon as possible and as completely as possible, an original and 3 copies of a written citation, which shall be a notice to appear in court for 1 or more civil infractions.

MCL 257.742(1) appears to require that an officer who stops a person actually witness the infraction. However, our Supreme Court has long recognized the “police team” theory in

application of MCL 257.742(1). The police team theory provides that an arresting officer may rely on information provided to him by another officer in order to satisfy the “presence requirement” of MCL 257.742(1). *People v Dixon*, 392 Mich 691, 696-699; 222 NW2d 749 (1974), abrogated in part on other grounds *People v Hawkins*, 468 Mich 488; 668 NW2d 602 (2003); *People v Mackey*, 121 Mich App 748, 753-754; 329 NW2d 476 (1982). Under this theory, officers are allowed to “combine their collective perceptions so that if the composite otherwise satisfies the presence requirement that requirement is deemed satisfied although the arresting officer does not himself witness all the elements of the offense.” *Dixon*, 392 Mich at 698.

Here, the FANG officer who witnessed defendant commit a traffic violation when she drove in excess of the speed limit possessed probable cause to stop defendant without a warrant. *Davis*, 250 Mich App at 363. Although the arresting officer did not witness defendant’s traffic violation, under the police team theory, she was imputed with the knowledge of the FANG officer. *Dixon*, 392 Mich at 696-699. Therefore, the arresting officer had probable cause for the warrantless stop, and the stop did not violate the presence requirement of MCL 257.742(1).

IV

Because the traffic stop was valid and defendant consented to the subsequent search, the trial court erred when it suppressed the evidence. We reverse the trial court’s order granting defendant’s motion to suppress and remand for reinstatement of the information and further proceedings consistent with this opinion.

Reversed and remanded. We do not retain jurisdiction.

/s/ Deborah A. Servitto
/s/ Brian K. Zahra
/s/ Pat M. Donofrio