

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

VERNON LEROY SMITH, JR.,

Defendant-Appellee.

UNPUBLISHED

June 14, 2012

No. 299746

Ingham Circuit Court

LC No. 10-000214-FH

Before: BORRELLO, P.J., and O'CONNELL and TALBOT, JJ.

PER CURIAM.

Following the grant of defendant's motion to suppress evidence, the trial court dismissed charges of possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii); possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b(1); and carrying a concealed pistol, MCL 750.227(2). The prosecution appeals by right, and for the reasons set forth in this opinion, while we affirm the trial court's decision, we do so based on significantly different legal reasoning.

I. FACTS AND PROCEDURAL HISTORY

On January 5, 2010, an officer for the Tri-County Metro Narcotics Squad ("Metro") received an anonymous tip implicating defendant and his alleged girlfriend in a marijuana distribution scheme. According to the tip, the couple possessed approximately two pounds of marijuana, marijuana paraphernalia, and two handguns in their Delhi Township apartment. Metro officers conducted "trash pulls" at the Delhi Township apartment on January 12 and January 19 to investigate the tip. The officers discovered various items of marijuana paraphernalia, marijuana seeds and stems, and letters addressed to defendant's alleged girlfriend at the Delhi Township apartment. The trash also contained a letter addressed to defendant at a different apartment.

Metro officers obtained and executed a search warrant for the Delhi Township apartment on January 19, 2010. Shortly before the search warrant was executed, one Metro officer observed defendant driving his maroon Chrysler 300 in the area near the Delhi Township apartment. The Metro officer witnessed defendant commit two separate traffic offenses: turning without activating a turn signal, MCL 257.648(2); and driving with illegally tinted windows, MCL 257.709(1)(a). The Metro officer radioed another police officer requesting that the police

officer conduct a traffic stop of defendant. The legal basis for the traffic stop was the alleged traffic offenses. However, both officers testified at the preliminary examination that the central purpose of the traffic stop was to investigate defendant regarding the alleged marijuana trafficking.

When stopped, defendant provided the officer with a valid driver's license, vehicle registration, and proof of insurance. Defendant also consented to a pat-down of his person, which yielded no illegal contraband. Defendant refused to consent to a search of his vehicle, and the officer eventually transported defendant to the Delhi Police Station for further questioning. Because defendant's vehicle was unoccupied and allegedly obstructing traffic, another police officer arranged for the vehicle to be towed. When this officer entered defendant's vehicle to prepare it for towing by turning off the engine, the officer noted an odor of marijuana. The officer also saw a marijuana seed in plain view.

Metro officers obtained a search warrant for defendant's vehicle on the basis of several facts: the anonymous tip, the evidence obtained from the trash pulls, the marijuana odor and seed, and an incriminating statement made by defendant at the Delhi Police Station. A search of the vehicle pursuant to the search warrant uncovered nearly two ounces of marijuana, items suggesting marijuana distribution, and a loaded handgun.

Defendant moved to suppress the evidence obtained from his vehicle as the fruits of an illegal seizure and search. The prosecution conceded that defendant's detention at the Delhi Police Station was unsupported by probable cause and was therefore illegal. The trial court did not conduct a suppression hearing, but it did hear oral arguments and reviewed the transcript of the preliminary examination. The trial court concluded that the initial traffic stop was an illegal seizure because the alleged traffic violations were a mere pretext to investigate defendant for the marijuana trafficking. The trial court further concluded that the anonymous tip and trash pulls did not provide the police with a reasonable suspicion to conduct an investigative stop of defendant's vehicle. Therefore, the trial court concluded that the police had no legal justification for stopping defendant and all seized evidence was fruit of the poisonous tree. Accordingly, the trial court dismissed the charges against defendant and this appeal ensued.

II. STANDARD OF REVIEW

The trial court's findings of fact are reviewed for clear error. *People v Jenkins*, 472 Mich 26, 31; 691 NW2d 759 (2005). The application of a constitutional standard to the facts is reviewed de novo. *People v Attebury*, 463 Mich 662, 668; 624 NW2d 912 (2001). The trial court's conclusions of law are reviewed de novo. See *People v Daoud*, 462 Mich 621, 629-630; 614 NW2d 152 (2000).

III. ANALYSIS

A. TRAFFIC STOP

The record clearly illustrates, and the prosecutor concedes, that the stop of defendant's motor vehicle was a pretextual stop. As used in this case, a pretextual stop was a stop used as a

pretext to search the motor vehicle to determine whether defendant possessed guns or drugs. Defendant concedes that the traffic stop was lawful, however, he argues that his continued detention violated his rights under the Fourth Amendment. The trial court held that the stop was merely a pretext to search defendant's vehicle and therefore violated defendant's Fourth Amendment Rights. On appeal, the prosecution argues that the trial court erred in this conclusion for two reasons. First, the "actual motives for stopping the vehicle were irrelevant," and defendant committed two civil infractions which justified the stop.

Under the Fourth Amendment to the United States Constitution and Article 1, § 11 of the Michigan Constitution¹, a person has the right to be free from "unreasonable searches and seizures." *People v Slaughter*, 489 Mich 302, 310; 803 NW2d 171 (2011). The protection provided by the Michigan Constitution is generally concurrent with the protection provided by the U.S. Constitution. *Id.* at 311.²

In *United States v Robinson*, 414 US 218, 221, n1, 38 L Ed 2d 427, 94 S Ct 467 (1973), the United States Supreme Court held that a traffic-violation arrest would not be rendered invalid by the fact that it was "a mere pretext for a narcotics search," and that a lawful post arrest search of the person would not be rendered invalid by the fact that it was not motivated by the officer-safety concern that justifies such searches. *Whren*, 517 US at 813. *Robinson* thus established: "the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action." *Robinson*, 436 US at 136, 138. Relying on this precedent set forth in *Robinson*, the United States Supreme Court in *Whren*

¹ U.S. Const, Am IV ensures the following: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. Const, Art 1, § 11 provides, in relevant part: The persons, houses, papers, and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any place or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation. The provisions of this section shall not be construed to bar evidence from evidence in any criminal proceeding any narcotic drug . . . seized by a peace officer outside the cartilage of any dwelling in this state.

For purposes of our discussion, we note that because the Michigan Constitution does not provide more protection than its federal counterpart, under the circumstances of this case, consideration of defendant's motion to exclude the evidence necessarily implicates his federal constitutional rights. *People v Faucett*, 442 Mich 153, 158; 449 NW2d 764 (1993).

² This factor is significant to this case considering the United States Supreme Court's ruling in *Whren v United States*, 517 US 806; 116 S Ct 1769; 135 L Ed 2d 89 (1996).

held that the temporary detention of a vehicle based on probable cause in the belief that traffic laws had been broken did not violate the Fourth Amendment even if the officers would not have stopped the motorist without some additional law enforcement objective. *Whren*, 517 US at 813-814. In effect, the ruling in *Whren* stands for the proposition that the test for that validity of a traffic stop is not whether the police would have made the stop, but whether they could have made the stop. Hence, “[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.”³ *Whren*, 517 US at 813.

Our appellate courts have adopted the analysis announced in *Robinson* and *Whren* and have likewise specifically rejected a subjective intent test to determine the validity of a traffic stop. In *People v Chapo*, 283 Mich App 360, 366; 770 NW2d 68 (2009); MCL 257.742(1), this Court stated: “A police officer who witnesses a civil infraction may stop and temporarily detain the offender for the purpose of issuing a written citation.” Additionally, we have held that if a police officer observes a traffic violation, the officer’s stop of the vehicle is justified regardless of the officer’s subjective reasons for making the stop. *People v Laube*, 154 Mich App 400, 407; 397 NW2d 325 (1986). In *People v LaBelle*, 478 Mich 891; 732 NW2d 114 (2007), our Supreme Court explained:

If a stop of a motor vehicle is objectively lawful, the subjective intent of the officer is irrelevant to the validity of the stop or a subsequent arrest or search and seizure of evidence. *Whren v United States*, 517 US 806; 116 S Ct 1769; 135 L Ed 2d 89 (1996). That is, a valid stop on the basis of a traffic violation will not be invalidated on the ground that the officer had an ulterior motive when he or she made the stop. *Id.*; *People v Davis*, 250 Mich App 357, 363; 649 NW2d 94 (2002). [*Id.* at 891.]

In this case, defendant concedes that the officer had sufficient legal cause to believe that defendant committed a traffic offense based on his observations of violations of MCL 257.709(1)(a), which prohibits the use of tinted film on a vehicle’s windows. Because the officer had sufficient legal cause to believe that defendant had committed a crime, the officer’s stop of defendant’s vehicle was constitutional. *People v Davis*, 250 Mich App 357, 363; 649 NW2d 94 (2002). Additionally, the facts giving rise to the traffic stop should have negated any inquiry by the trial court into the officer’s subjective intent. To have done so constituted clear legal error by the trial court. Therefore, in accordance with long-standing legal principles, we reverse the trial court’s decision and find that the traffic stop of defendant was valid.⁴

³ We recognize there may be instances where a trial court may have sufficient legal reason to make inquiry into an officer’s subjective intent when considering the validity of a traffic stop. As stated by Justice Scalia in his majority opinion in *Whren*: “We of course agree with petitioners that the Constitution prohibits selective enforcement of the law based on considerations such as race.” *Whren*, 517 US at 813. However, such considerations are not present in this case.

⁴ As will be discussed later in this opinion, we also find that police arguably had reasonable suspicion to effectuate a valid traffic stop based on an anonymous tip. We note for purposes of

A. SEARCH OF MOTOR VEHICLE

The validity of the traffic stop does not end our inquiry. We must next consider whether the arrest of defendant and subsequent search of his motor vehicle were valid. On the issue of whether defendant was “arrested” prior to the search of his motor vehicle, the prosecution concedes that defendant was under arrest, stating: [“police officers tacitly admitted that the [d]efendant was under arrest by reading him *Miranda* warnings.”] As to whether defendant was arrested within the mandates of the Fourth Amendment, the prosecutor concedes that [“a]t the time the [d]efendant was arrested, the police did not have probable cause to believe that he had committed a crime.” Having conceded the fact defendant was arrested within the meaning of the Fourth Amendment and that the arrest was “unlawful” under the Fourth Amendment, the prosecution requests this Court reverse the trial court’s suppression of the evidence seized on two separate basis: (1) that the officers had probable cause to search the motor vehicle prior to the traffic stop, and (2) the evidence seized from defendant is not subject to suppression because there was no “causal connection” between defendant’s arrest and the seizure of marijuana and a firearm.

We first address the issue of whether police had probable cause to search defendant’s motor vehicle prior to his arrest. The prosecution argues that the anonymous tip established probable cause to search defendant’s vehicle for marijuana and handguns. Therefore, the prosecution argues that the vehicle search was justified by factors other than the traffic stop. To resolve this issue, it is necessary to determine whether the anonymous tip and subsequent police investigation provided probable cause to search defendant’s vehicle.⁵

In *Brinegar v United States*, 338 US 160, 175-176; 695 S Ct 1302; 93 L Ed 1879 (1949), the United States Supreme Court, defining probable cause, stated:

‘The substance of all the definitions of probable cause’ ‘is a reasonable ground for belief of guilt.’ *McCarthy v De Armit*, 99 Pa St 63, 69, quoted with approval in the *Carroll* opinion. 267 US at 161. And this ‘means less than evidence which would justify condemnation’ or conviction, as MARSHALL, C. J., said for the Court more than a century ago in *Locke v United States*, 7 Cranch 339, 348. Since MARSHALL’S time, at any rate, it has come to mean more than bare suspicion: Probable cause exists where ‘the facts and circumstances within

this finding that police are only required to have reasonable suspicion to effectuate a valid traffic stop. *People v Hyde*, 285 Mich App 428, 436; 775 NW2d 833 (2009). However, in *Williams v Michigan*, 472 Mich 308, 314; 696 NW2d 636 (2005), our Supreme Court made the finding that the traffic stop at issue was “. . . based on probable cause and was reasonable.” This has seemingly caused some confusion in our Court, leading some to conclude that this finding in *Williams* stands for the proposition that a valid traffic stop must be premised on probable cause. We do not read this statement in *Williams* as precluding the existence of the lower standard of reasonable suspicion as a proper evidentiary standard to determine the validity of a traffic stop.

⁵ Because the prosecutor has conceded defendant was illegally detained at the Delhi Police Station, we ignore his incriminating statement and the officer’s observation of the marijuana odor and seed.

their [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed. *Carroll v United States*, 267 US 132, 162. (Internal footnotes omitted.)

Our appellate Courts have similarly defined probable cause, stating: "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), whereas "[r]easonable suspicion" requires more evidence than a mere "hunch," but less evidence than probable cause. *People v Champion*, 452 Mich 92, 98; 549 NW2d 849 (1996).

An anonymous tip may provide reasonable suspicion for an investigative stop. *People v Faucett*, 442 Mich 153, 168; 499 NW2d 764 (1993). See also, *Adams v Williams*, 407 US 143; 92 S Ct 1921; 32 L Ed 2d 612 (1972). An anonymous tip may also provide the probable cause necessary for a more intrusive search. *Faucett*, 442 Mich at 165 n16.⁶ To support a search or seizure, the anonymous tip must have "sufficient indicia of reliability" when considering the "totality of the circumstances." *Faucett*, 442 Mich at 169. "In analyzing whether there is sufficient corroboration for an informant's tip to constitute probable cause . . . the relevant inquiry is not whether particular conduct is innocent or guilty, but the degree of suspicion that attaches to particular types of noncriminal acts." *People v Levine*, 461 Mich 172, 180-181; 600 NW2d 622 (1999).

In this case, several aspects of the anonymous tip were corroborated by police investigation. The garbage searches of the Delhi Township apartment uncovered numerous items of marijuana paraphernalia. This corroborated the statement that marijuana trafficking was occurring at the apartment. The garbage searches also uncovered multiple letters addressed to defendant's alleged girlfriend at the apartment. This corroborated the statement that defendant's alleged girlfriend was an occupant of the apartment. Police surveillance of the apartment further established that defendant's alleged girlfriend may have been involved with hand-to-hand drug transactions. This corroborated the statement that defendant's alleged girlfriend distributed marijuana. However, there were also statements which undermined the credibility of the anonymous tip, all of which directly related to defendant. The anonymous tip stated that defendant lived at the apartment under surveillance. This information was contrary to records obtained by police through databases and trash pulls that indicated defendant had different addresses. Additionally, while police were able to corroborate the illegal aspects of the anonymous tip with respect to Hamilton, they were never able to independently uncover or view any illegal activity by defendant. However, solely for the purpose of ascertaining the

⁶ An investigative stop of a vehicle requires reasonable suspicion. *Faucett*, 442 Mich at 170 n19. A vehicle search without a warrant requires probable cause. *Id.* This is known as the "automobile exception" to the warrant requirement. See, *People v Carter*, 250 Mich App 510, 514; 655 NW2d 236 (2002).

informant's credibility, we find that, considered together, these facts supported the informant's reliability.

The anonymous tip suggested two illegal activities: marijuana distribution and illegal firearm possession. Evidence regarding alleged marijuana distribution was found in the apartment's garbage. But the evidence linking defendant to the apartment, and therefore the garbage, was minimal. The law enforcement database listed defendant with a different address from the Delhi Township apartment address. Mail recovered from the garbage reflected multiple addresses for defendant. The anonymous tip also correctly stated that defendant's alleged girlfriend drove a blue Ford Escape and that defendant drove a maroon Chrysler. These statements are relatively weak indicators of the tip's reliability because they address legal, wholly unsuspecting activity. *Levine*, 461 Mich at 180-181. Further, a vehicle's driver is not particularly hidden from the general public for obvious reasons. Thus, identifying the drivers of the two vehicles does not necessarily indicate particularized knowledge. Hence, while the anonymous tip arguably provided reasonable suspicion for an investigative stop of defendant's vehicle, *Faucett*, 442 Mich at 168, we cannot conclude that the anonymous tip provided probable cause for a search of defendant's motor vehicle. A traffic violation, by itself, is insufficient to justify a search of defendant's vehicle. See *People v Burrell*, 417 Mich 439, 453; 339 NW2d 403 (1983) (stop for traffic violation limited in scope to time necessary to write citation); see also *People v Williams*, 472 Mich 308, 315; 696 NW2d 636, cert den sub nom *Williams v Michigan*, 546 US 1031 (2005) ("A traffic stop is reasonable as long as the driver is detained only for the purpose of allowing an officer to ask reasonable questions concerning the violation of law and its context for a reasonable period.") Additionally, as conceded by the prosecutor, the traffic violation here was insufficient to justify the extended detention and subsequent "arrest" of defendant.

In addition to the factors and case law cited above, our conclusion that police lacked probable cause to search the motor vehicle defendant was operating is premised on several other factors. First, neither the anonymous tip nor the observations of police officers provided any basis to conclude that the motor vehicle being driven by defendant was used for illegal purposes, as the alleged and viewed illegal activity was either confined to the apartment under surveillance or committed by defendant's alleged girlfriend. Prior to the unlawful detention of defendant, police never observed defendant committing an illegal act, hence the illegal aspects of the tip were corroborated only with respect to Hamilton. The prosecutor has conceded that police did not have probable cause to arrest defendant in this case, based, in part, on the lack of any observations made by the police from which we may even draw an inference that defendant was engaged in illegal activity. Since it is undisputed that police lacked probable cause to arrest defendant, the same evidence from which that conclusion is derived also supports a finding by this Court that the police lacked probable cause to search the motor vehicle. Simply stated, considering the totality of the circumstances at the time of defendant's arrest, we cannot find any evidence or logical inferences in this record which would connect the motor vehicle being driven by defendant to any illegal activity. In the absence of evidence "sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the accused's guilt," *Yost*, 468 Mich at 126, we find the police did not have probable cause to search defendant's motor vehicle.

A. SUPPRESSION OF THE EVIDENCE

The prosecutor, citing *People v Woodard*, 111 Mich App 528, 314 NW2d 680 (1981), asserts that evidence is subject to suppression only if that evidence was discovered “through exploitation of the arrest.” This is commonly known as the independent source exception to the exclusionary rule. This exception stands for the general proposition that evidence obtained is admissible if the police can prove that it was obtained from an independent source not connected with the illegal search and seizure. See, generally, *United States v Crews*, 445 US 463; 100 S Ct 1244; 63 L Ed2d 537 (1980). The prosecutor asserts the independent source rule applies because the police possessed “probable cause to search the vehicle before they stopped the defendant or placed him in custody.” Having concluded that police lacked probable cause to search the motor vehicle, we reject the prosecutor’s argument that suppression of the evidence in this case is barred by the independent source exception to the exclusionary rule. We find that the independent source rule is inapplicable to this case for the simple reason that the unlawful activity formed the basis for police obtaining the evidence subject to suppression. However, we proceed in our analysis to determine if application of the exclusionary rule is warranted.

Generally, when evidence is directly obtained through a presumptively unreasonable search or seizure, the evidence must be excluded from trial. *People v Barbarich (On Remand)*, 291 Mich App 468, 473; 807 NW2d 56 (2011). In addition, evidence indirectly obtained through a presumptively unreasonable search or seizure is subject to exclusion as “fruit of the poisonous tree.” *People v Reese*, 281 Mich App 290, 295; 761 NW2d 405 (2008); see *Wong Sun v United States*, 371 US 471, 487-488; 83 S Ct 407; 9 L Ed 2d 441 (1963). “[T]he exclusionary rule prohibits the introduction into evidence of materials and testimony that are the products or indirect results of an illegal search, the so-called ‘fruit of the poisonous tree’ doctrine.” *People v Stevens*, 460 Mich 626, 634; 597 NW2d 53 (1999). To determine whether evidence should be excluded, courts should consider the deterrent effect of applying the exclusionary rule. *Id.* at 635-636. “Exclusion of improperly obtained evidence serves as a deterrent to police misconduct, protects the right to privacy, and preserves judicial integrity.” *People v Brown*, 279 Mich App 116, 127; 755 NW2d 664 (2008). In *People v Corr*, 287 Mich App 499, 508; 788 NW2d 860 (2010), the Court stated:

“[T]he exclusionary rule is a harsh remedy designed to sanction and deter police misconduct where it has resulted in a violation of constitutional rights” and “should be used only as a last resort.” *People v Frazier*, 478 Mich 231, 247; 733 NW2d 713 (2007) (quotation marks and citations omitted). “In determining whether exclusion is proper, a court must evaluate the circumstances of the case in the light of the policy served by the exclusionary rule” *Id.* at 249 (quotation marks and citations omitted).

In this case, the police arrested defendant without probable cause and transported him to the Delhi Police Station without any charges being lodged against him. The prosecutor, defendant and trial court all agreed that this conduct violated defendant’s Fourth Amendment Rights. Once defendant refused to consent to a search of the motor vehicle, he was forcibly removed in order that police may accomplish their stated goal of searching the motor vehicle. That all of this unlawful activity was coordinated through Metro officers leads us to conclude that the nature of the police conduct in this case calls for application of the exclusionary rule. See *People v Reese*, 281 Mich App 290, 299; 761 NW2d 405 (2008). In addition, the police

were not without lawful alternatives to getting the information they sought from the motor vehicle. See, generally, *Illinois v Gates*, 462 US 213; 103 S Ct 2317; 76 L Ed2d 527 (1983).

In summation, the trial court concluded that the police did not have reasonable suspicion to justify an investigative stop of defendant. We hold that this conclusion was incorrect for the reasons set forth above. However, for the reasons more fully explained above, the police did not have probable cause to search the motor vehicle and the nature and extent of their conduct justifies application of the exclusionary rule to the unlawfully obtained evidence. Hence, the trial court reached the right result but used an incorrect analysis. See *People v Bauder*, 269 Mich App 174, 187; 712 NW2d 506 (2005) (“This Court will not reverse a trial court decision when the lower court reaches the correct result even if for a wrong reason.”).

Affirmed.

/s/ Stephen L. Borrello
/s/ Peter D. O’Connell
/s/ Michael J. Talbot