

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

FOR PUBLICATION
September 9, 2014

v

CHARLES ALMANDO-MAURICE DUNBAR,

Defendant-Appellant.

No. 314877
Muskegon Circuit Court
LC No. 12-062736-FH

Before: METER, P.J., and O'CONNELL and SHAPIRO, JJ.

METER, P.J. (*dissenting*).

For the reasons set forth below, I respectfully dissent. I would affirm the denial of defendant's motion to suppress evidence.

This case arises out of a traffic stop of defendant's vehicle. On October 12, 2012, at approximately 1:00 a.m., deputies of the Muskegon County Sherriff's Department stopped defendant's truck on the basis of an obstructed license plate. After stopping defendant's vehicle, deputies found cocaine, marijuana, and a handgun.

Defendant argues that the deputies did not have a lawful basis for stopping his truck and that his motion to suppress should have been granted. "A trial court's ruling on a motion to suppress evidence is reviewed for clear error, but its conclusions of law are reviewed de novo." *People v Unger*, 278 Mich App 210, 243; 749 NW2d 272 (2008). "A 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 Malone*, 287 Mich App 648, 663; 792 NW2d 7 (2010) (internal citation and quotation marks omitted). If the trial court was in a superior position to assess the evidence, we will give deference to the trial court's resolution of factual issues, especially when it involved the credibility of witnesses. MCR 2.613(C); *People v Farrow*, 461 Mich 202, 209; 600 NW2d 634 (1999).

The lawfulness of a search or seizure depends upon its reasonableness. See *Virginia v Moore*, 553 US 164, 171; 128 S Ct 1598; 170 L Ed 2d 559 (2008). "In order to effectuate a valid traffic stop, a police officer must have an articulable and reasonable suspicion that a vehicle or one of its occupants is subject to seizure for a violation of law." *People v Hyde*, 285 Mich App 428, 436; 775 NW2d 833 (2009) (internal citation and quotation marks omitted). MCL 257.225(2) provides that a license plate "shall be maintained free from foreign materials that obscure or partially obscure the registration information and in a clearly legible condition." A

violation of MCL 257.225(2) constitutes a civil infraction. MCL 257.225(7).¹ “A police officer who witnesses a civil infraction may stop and temporarily detain the offender” *People v Chapo*, 283 Mich App 360, 366; 770 NW2d 68 (2009).

The record shows that the trial court did not clearly err in concluding that defendant’s license plate was obstructed by a trailer hitch. At the hearing, deputies testified that they could not see the entire license-plate number because it was obstructed by a trailer hitch. The trial court determined that the deputies were credible, which is a determination that we will not disturb. See MCR 2.613(C) and *Farrow*, 461 Mich at 209. Additionally, the trial court’s finding is supported by pictures taken at the scene, which show that defendant’s license plate was obstructed.

Further, because police officers may stop and detain an individual who commits a civil infraction, *Chapo*, 283 Mich App 366, the trial court correctly determined that the obstruction of defendant’s license-plate number provided a lawful basis for the traffic stop pursuant to MCL 257.225(2) and that suppression of the drugs and handgun seized during the traffic stop was not required.

It is simply unreasonable to expect police officers to essentially “weave” within a lane in order to view the entire license plate of a vehicle.² Moreover, the lead and concurring opinions appear to indicate that the pertinent phrase from MCL 257.225(2)—“[t]he plate shall be maintained free from foreign materials . . . and in a clearly legible condition”—concerns only items that touch the plate itself. This is not a reasonable reading of the statute. What if, for example, a person attached a sort of shield that entirely covered his or her license plate but did not touch the plate itself? Clearly the statute refers to keeping the plate free from obstructing materials. Random House Webster’s Dictionary (1997) defines “maintain,” in part, as “to keep in a specified state, position, etc.” A license plate that is in otherwise perfect condition but that cannot be read because of obstructing materials is not being “kept” in “a clearly legible condition.”³

¹ The pertinent subsections of MCL 257.225 were amended after the incident in this case; the changes are immaterial for purposes of this appeal.

² Nor should officers be required to enter multiple possible numbers into their computers to try to ascertain the correct license-plate number for a vehicle.

³ Because it is not in issue here, I do not reach the question regarding whether a properly licensed, attached trailer that obscures a vehicle’s license plate would be grounds for a traffic stop. As noted in the concurring opinion, this Court must find a statute constitutional unless its unconstitutionality is clearly apparent and, as long as First Amendment concerns are not present in conjunction with a vagueness issue, this Court must examine a statute in light of the particular facts at issue. *People v Harris*, 495 Mich 120, 134; 845 NW2d 477 (2014); *People v Williams*, 142 Mich App 611, 613; 370 NW2d 7 (1985). I find MCL 257.225(2) constitutional as applied to the present facts and also find that it provided a valid basis for the traffic stop.

I would affirm.

/s/ Patrick M. Meter