

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE TOWNSHIP OF DEWITT,

Plaintiff-Appellee,

v

JEFFREY ADAMS PORTER,

Defendant-Appellant.

UNPUBLISHED

June 9, 1998

No. 204997

Clinton Circuit Court

LC No. 96-008244 AV

Before: Wahls, P.J., and Jansen and Gage, JJ.

MEMORANDUM.

Defendant appeals by leave granted the circuit court order affirming the district court's denial of his motion to suppress. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A vehicle being driven by defendant was stopped by police after a citizen reported that it was slowly circling his block repeatedly. Officers observed no traffic violations, and stopped the vehicle based solely on the citizen's unsupported suspicions. Based on information provided in the traffic stop, defendant was charged with driving in violation of a restricted license. Defendant moved to suppress the license as evidence, based on an illegal stop. The district court denied the motion.

On appeal, the circuit court found that the stop was illegal, but that the evidence need not be suppressed, following the attenuation exception to the exclusionary rule, discussed in *People v Walker*, 27 Mich App 609; 183 NW2d 871 (1970) and *People v Lambert*, 174 Mich App 610; 436 NW2d 699 (1989). Defendant moved for rehearing based on the recent decision in *People v LoCicero (After Remand)*, 453 Mich 496; 556 NW2d 498 (1996). The circuit court denied defendant's motion, finding that *LoCicero* distinguished *Walker* and *Lambert*, and did not overrule them.

Plaintiff has not contested that the initial stop was improper. The exclusionary rule forbids the use of direct and indirect evidence acquired from governmental misconduct. *LoCicero, supra*, p 508. Three exceptions to the exclusionary rule have emerged: the independent source exception, the attenuation exception, and the inevitable discovery exception. *Id.* In *LoCicero*, the

Supreme Court construed the attenuation exception consistent with *Lambert, supra* and *Walker, supra*. When a defendant claims that physical evidence should be suppressed as a result of an unlawful seizure of his person, the appropriate inquiry is whether that evidence was procured by an exploitation of the illegality, or by means sufficiently distinguishable to be purged of the primary taint. *Lambert, supra*, p 617. This finding depends on whether there has been an exploitation of the primary illegality. *Id.*

Here, there was no showing that the police sought to exploit the primary illegality of their stop. The initial suspicions were based on defendant's act of repeatedly circling a residential neighborhood at slow speed late at night. There is no claim that the officer had any suspicions related to the status of defendant's driver's license. The officer observed no traffic violations. The charge was passively related to an improper stop, obtaining defendant's driver's license information, rather than the active exploitation of looking for illegal substances, found in *LoCicero*. The circuit court properly applied the attenuation exception to affirm the denial of defendant's motion to suppress.

Affirmed.

/s/ Myron H. Wahls
/s/ Kathleen Jansen
/s/ Hilda R. Gage