

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

THOMAS ALBERT ROSEMA,

Defendant-Appellee.

UNPUBLISHED

May 26, 2000

No. 219444

Ottawa Circuit Court

LC No. 98-022469-FH

Before: Doctoroff, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

Defendant was charged with one count of carrying a concealed weapon, MCL 750.227(2); MSA 28.424(2), and one count of operating a vehicle under the influence of intoxicating liquor, MCL 257.625(1)(a); MSA 9.2325(1)(a). Defendant had twice previously been convicted of violating MCL 257.625(1)(a); MSA 9.2325(1)(a). Therefore, had he been convicted as charged, defendant would have been guilty of a felony pursuant to MCL 257.625(10)(c); MSA 9.2325(10)(c). The prosecutor appeals as of right from the trial court's dismissal of all charges against defendant. We affirm.

This case arises out of the arrest and search of defendant on October 30, 1998, in Muskegon County by Deputy Shawn James of the Ottawa County Sheriff's Department. The prosecutor first argues that the trial court's dismissal was erroneous because of the applicability of MCL 762.3(1); MSA 28.846(1). We disagree. A trial court's ruling on a motion to suppress evidence will not be reversed unless that decision is clearly erroneous. *People v Burrell*, 417 Mich 439, 448; 339 NW2d 403 (1983). A decision is said to be clearly erroneous where, after a review of the record, this Court is left with a definite and firm conviction that a mistake has been made. *People v Armendarez*, 188 Mich App 61, 65-66; 468 NW2d 893 (1991).

The prosecutor contends that suppression of the evidence and dismissal of the charges against defendant was not warranted because Deputy James had the authority to arrest defendant within one mile of the Ottawa County border. The prosecutor's argument is based on MCL 762.3(1); MSA 28.846(1), which provides:

Any offense committed on the boundary line of 2 counties, or within 1 mile of the dividing line between them, may be alleged in the indictment to have been committed, and may be prosecuted and punished in either county.

Our Supreme Court has stated that if “the language of [a] statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written. No further judicial construction is required or permitted.” *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). Clearly, the statute cited above relates only to the indictment, prosecution and punishment of defendants. It does not relate to police authority to stop, search or arrest individuals. Therefore, we will not extend the scope of the statute and thereby give county police officers the right to stop, search and arrest individuals within one mile of their county’s border.

MCL 764.2a; MSA 28.861(1) (hereinafter “§ 764.2a”) provides:

A peace officer of a county, city, village, or township of this state may exercise authority and powers outside his own county, city, village, or township, when he is enforcing the laws of this state in conjunction with the Michigan state police, or in conjunction with a peace officer of the county, city, village or township in which he may be, the same as if he were in his own county, city, village, or township.

The prosecutor concedes that Deputy James was not “engaged in a joint law-enforcement effort,” and was not in “hot pursuit” of defendant at the time of the traffic stop. Therefore, by stopping, searching and arresting defendant in Muskegon County, Deputy James acted in violation of §764.2a. The prosecutor argues that even if Deputy James did commit a statutory violation, the court’s imposition of the exclusionary rule was improper. To support this argument, the prosecutor relies primarily on *People v Clark*, 181 Mich App 577; 450 NW2d 75 (1989), and *People v Meyer*, 424 Mich 143; 379 NW2d 59 (1985). However, the prosecutor’s contention that *Meyer* and *Clark* represent controlling precedent in the present case is erroneous because of an important factual distinction between those cases and the present case.

In *Clark*, an undercover Livonia police officer purchased cocaine from the defendant in Wixom. *Clark*, 181 Mich App at 578-579. The police officer paid the defendant for the cocaine in Novi. *Id.* at 578. The police officer was not involved in the arrest of the defendant, but did swear to and file the complaint against the defendant and “provided evidence in the form of his own testimony against the defendant at the preliminary examination.” *Id.* at 579, 580. The district court suppressed the evidence and dismissed the charge against the defendant because the police officer was acting outside his jurisdiction when he purchased the cocaine from the defendant, and thus his actions were in violation of § 764.2a. This Court reversed, opining:

In this case, the only illegal police conduct involved is an apparent violation of [§ 764.2a] Defendant fails, however, to establish either that there was a violation of a constitutional right or that the above statute was intended or designed to protect the rights of criminal defendants. [*Id.* at 580.]

Citing *Meyer, supra*, this Court held that a police officer's violation of § 764.2a, without more, did not warrant imposition of the exclusionary rule, because "the purpose of [§ 764.2a] is not to protect the rights of criminal defendants, but rather to protect the rights and autonomy of local governments." *Clark*, 181 Mich App at 581.

Meyer, like *Clark*, involved an undercover police officer who engaged in a drug transaction outside his jurisdiction. *Meyer*, 424 Mich at 147-149. As in *Clark*, the police officer in *Meyer* was not involved in the arrest of the defendant, but did swear to and sign the felony complaint against the defendant. *Id.* at 152. The trial court dismissed the case because of the officer's violation of § 764.2a. *Id.* at 149. This Court affirmed the trial court's decision. *Id.* at 149-150. Our Supreme Court reversed. *Id.* at 162. When our Supreme Court framed the issue of the case, it noted that because the police officer only swore to and signed the felony complaint against the defendant, "this case is *unlike* other cases wherein the police officer operating outside his jurisdiction arrests the defendant." *Id.* at 153, n 9 (emphasis in original). In the present case, the deputy stopped, arrested and searched defendant while operating outside his jurisdiction. Therefore, both *Clark* and *Meyer* are distinguishable from the present case and do not constitute controlling case law.

In *Meyer*, our Supreme Court cited *People v Davis*, 133 Mich App 707; 350 NW2d 796 (1984), as a case involving an arrest by an officer outside her jurisdiction. *Meyer*, 424 Mich at 153, n 9. In *Davis*, this Court stated that "police officers acting outside their jurisdiction have the authority as citizens under MCL 764.16; MSA 28.875, given probable cause, to make an arrest for a felony committed in their presence." *Davis*, 133 Mich App 707 at 715. Thus, the first issue to be resolved in the present case is whether Deputy James had the authority as a citizen to arrest and search defendant. In relevant part, MCL 764.16; MSA 28.875 (hereinafter § 764.16) provides:

A private person may make an arrest –

(a) For a felony committed in his presence;

(b) When the person to be arrested has committed a felony although not in his presence.

Because Deputy James did not have probable cause to believe that defendant had committed or was committing a felony, he did not have authority under § 764.16 to arrest or search defendant.

As this Court has stated, "[n]o one without a warrant has any right to make an arrest in the absence of actual belief, based on actual facts creating probable cause of guilt." *People v Pankin*, 4 Mich App 19, 27; 143 NW2d 806 (1966). James admitted that the traffic stop was made in order "to make contact with the driver in reference to the equipment violation." Thus, James only had probable cause to believe that a civil infraction had occurred in his presence. Furthermore, even if smelling alcohol in defendant's truck gave James probable cause to believe that defendant was intoxicated, James nevertheless did not have the authority to arrest defendant under § 764.16 because he was not aware that a felony had occurred in his presence. A person guilty of operating a motor vehicle while intoxicated is generally guilty of a misdemeanor. MCL 257.625(8)(a); MSA 9.2325(8)(a). As noted

above, if defendant had been convicted of operating a motor vehicle while intoxicated, he would have been guilty of a felony pursuant to MCL 257.625(10)(c); MSA 9.2325(10)(c), because it would have been his third conviction within ten years. However, there is no indication in the record that James had knowledge of defendant's previous convictions when he arrested defendant. Therefore, at most, James had probable cause to believe that a misdemeanor had been committed in his presence. Finally, when James arrested defendant he did not have probable cause to believe that defendant had a pistol under the passenger seat of his vehicle. Therefore, according to the holdings of *Davis* and *Pankin*, because probable cause did not exist to arrest defendant for the commission of a felony, James did not have the authority as a citizen under § 764.16 to arrest defendant.

The next issue to be resolved is whether the trial court properly excluded the evidence in this case, leading to the dismissal of the charges against defendant. We find that the trial court's application of the exclusionary rule was proper because defendant's arrest was constitutionally invalid. In *Meyer* and *Clark*, the police officers' violations were statutory, not constitutional, because probable cause existed to arrest the defendants for committing felonies. *Meyer*, 424 Mich at 160; *Clark*, 181 Mich App at 580. Similarly, in *Davis*, this Court found that while the police officers may have acted in violation of § 764.2a in surveilling and arresting the defendant outside their jurisdiction, the exclusionary rule was nevertheless inapplicable because probable cause existed to arrest the defendant for the commission of a felony. *Davis*, 133 Mich App at 714-715. This Court has stated:

The per se exclusionary rule arose out of and applies to constitutionally invalid arrests. The constitutional validity of an arrest depends on whether probable cause to arrest existed at the moment the arrest was made by the officer. [*People v Lyon*, 227 Mich App 599, 611; 577 NW2d 124 (1998).]

Because probable cause did not exist to arrest defendant for the commission of a felony, his arrest by Deputy James was constitutionally invalid. Thus, the trial court properly applied the exclusionary rule to the evidence against defendant.

Affirmed.

/s/ Martin M. Doctoroff
/s/ David H. Sawyer
/s/ Mark J. Cavanagh