STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED February 23, 2001
v	No. 230003 Jackson Circuit Court
GARI LYNN FISHER, Defendant-Appellee.	LC No. 99-091634-AR

Before: Meter, P.J., and Neff and O'Connell, JJ.

PER CURIAM.

This case has been remanded by our Supreme Court for consideration as on leave granted. Plaintiff appeals the circuit court's order affirming the district court's decision to suppress breathalyzer test results and dismiss the case. We reverse the circuit court's order and remand to the district court for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A state police trooper stopped defendant's car because he believed that an air freshener hanging from defendant's rear view mirror obstructed her vision and thus contravened MCL 257.709(1)(c); MSA 9.2409(1)(c). This statute prohibits the display of any ornament or suspended object which obstructs the vision of the driver of a vehicle. A violation of MCL 257.709(1)(c); MSA 9.2409(1)(c) is an equipment violation and is considered to be a civil infraction. *People v Pitts*, 222 Mich App 260, 264; 564 NW2d 93 (1997).

After stopping the car, the trooper detected signs that defendant was intoxicated. Defendant was charged with OUIL/UBAL, MCL 257.625(1); MSA 9.2325(1). Breathalyzer tests indicated blood alcohol levels of .24 percent, .21 percent, and .22 percent.

Defendant moved to suppress the test results on the ground that the trooper had no basis for stopping her car. At the hearing, the trooper testified that he understood that any object dangling from the rear view mirror constituted a statutory violation and that defendant would not have been able properly to view the road. The district court granted the motion and dismissed the case, concluding that an air freshener dangling from a rear view mirror was not automatically a vision obstruction. The prosecution appealed to circuit court, which affirmed the district court's decision.

We denied the prosecution's application for leave to appeal the circuit court's order; however, our Supreme Court remanded the case for consideration as on leave granted. The concurrence to the Supreme Court's order noted specifically that the dispositive question was not whether an actual violation of MCL 257.709(1)(c); MSA 9.2409(1)(c) had occurred but whether the officer had a reasonable suspicion that a violation may have occurred. *People v Fisher*, 463 Mich 881; 617 NW2d 37 (2000).

We review a lower court's findings of fact on a motion to suppress for clear error, and we review the ultimate decision de novo. *People v Darwich*, 226 Mich App 635, 637; 575 NW2d 44 (1997).

An investigatory stop must be based on a particularized suspicion, based on an objective manifestation under the totality of the circumstances, that the person stopped has been, is, or is about to be involved in criminal activity. *People v Shabaz*, 424 Mich 42, 54; 378 NW2d 451 (1985). A hunch is not sufficient to give rise to a reasonable suspicion. *People v LoCicero (After Remand)*, 453 Mich 496, 505; 556 NW2d 498 (1996).

Plaintiff argues that the district court erred by granting defendant's motion to suppress the test results and dismissing the case and that the circuit court erred by affirming that decision. We agree, reverse the circuit court's order, and remand this case to the district court for further proceedings. The district court granted the motion to suppress and dismissed the case on the ground that the mere presence of an air freshener dangling from a rear view mirror did not constitute a violation of MCL 257.709(1)(c); MSA 9.2409(1)(c). This was not the dispositive question. The proper question for resolution was whether the trooper had a reasonable suspicion that a statutory violation occurred. *Fisher, supra*. The evidence produced at the hearing on defendant's motion to suppress established that the trooper concluded that the air freshener *did* potentially obstruct defendant's view of the road. Under the totality of the circumstances, the officer had a particularized suspicion that a violation of MCL 257.709(1)(c); MSA 9.2409(1)(c) had occurred. The trooper's stop of defendant's car was proper under the circumstances. *Shabaz, supra*; *People v Laube*, 154 Mich App 400, 406-407; 397 NW2d 325 (1986). The district court erred by suppressing the breathalyzer test results and dismissing the case, and the circuit court erred by affirming that decision.[1] We reverse the circuit court's order and remand for further proceedings consistent with this opinion.

Reversed and remanded. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Janet T. Neff
/s/ Peter D. O'Connell

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[1] We note that *People v Tavolette*, unpublished opinion per curiam of the Court of Appeals, issued August 24, 1993 (Docket No. 154327), on which the district court relied in suppressing the evidence, does not constitute binding precedent on this Court. See MCR 7.215(C)(1).