STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED March 9, 2001
v	No. 220788 Wayne Circuit Court
DEANTE D. LEE, Defendant-Appellee.	LC No. 99-000524

Before: Griffin, P.J., and Holbrook, Jr., and Murphy, JJ.

PER CURIAM.

Defendant was charged, as a second habitual offender, MCL 333.7413; MSA 14.15(7413), with possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii); MSA 14.15(7401)(2)(d)(iii), carrying a concealed weapon, MCL 750.227; MSA 28.424, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was bound over on these charges following a January 15, 1999, preliminary examination. However, following a hearing on defendant's motion to dismiss, the circuit court concluded that defendant's arrest was based on an illegal motor vehicle stop and dismissed all charges. The prosecution now appeals, arguing that the stop was valid pursuant to MCL 257.709; MSA 9.2409, which prohibits tinted car windows, and that the circuit court misconstrued this statute in finding that the arresting officers failed to establish the nontransparency of the tint on defendant's car windows. We reverse and remand.

The arresting officer, State Trooper Michael Woodward, testified that he stopped defendant for an equipment violation, illegal window tint, while defendant was driving a 1990 Mercury, two-door car. He arrested defendant for driving without a valid operator's license, and after defendant and his passenger got out of the car, Woodward's partner, State Trooper Nathan Johnson, searched the car. During this search Johnson discovered a handgun, later determined to be stolen, and eight baggies of marijuana. These discoveries resulted in the charges against defendant.

At defendant's preliminary examination, no significant issue was made of the officers' basis for stopping defendant. When asked to explain the window tint equipment violation, Johnson testified that under Michigan law, "[o]n the driver's and passenger's windows there's no tint that can be applied to the windows other than the four inch sunstrip similar [sic] what would be on the front windshield." On cross-examination Johnson was briefly questioned regarding the

darkness of the tint, and though he admitted he could not compare the degree of tint to that of other vehicles, he again testified that the officers' attention was attracted to the "violation on the driver's and passenger's windows" because the tint on those was illegal.

On reaching the circuit court, defendant filed a motion seeking dismissal of all charges on the ground that defendant's stop for illegally tinted windows was improper. Both officer's again testified at the hearing on defendant's motion, each admitting that they had made no precise determination of the darkness of the tint applied to the windows of defendant's car. In response to questioning by the defense attorney, Woodward testified that the tint was dark enough to be illegal because "[u]nder state law, any window tinting is illegal." Subsequently, the court asked whether testing had been done to determine the darkness of the tint to ensure that it was illegal. Woodward again, similarly responded that "under state law, no tinting is allowed at all." Johnson later testified that there had been no need to test for darkness of the tint because "there's no percentage law in Michigan, nothing can be applied to the driver or passenger window at all."

The trial court ultimately granted defendant's motion, interpreting the relevant statute as prohibiting window tint only if it renders the window nontransparent. The court held that because the officers testimony indicated that it was possible to see through the windows despite the tinting, no statutory violation existed and the stop was unfounded.

Statutory interpretation is a question of law which this Court reviews do novo. *People v Law*, 459 Mich 419, 423; 591 NW2d 20 (1999). To resolve the issue whether the trial court erred in its construction and interpretation of MCL 257.709; MSA 9.2409, we follow traditional rules. The purpose of statutory construction is to ascertain and give effect to legislative intent. *People v Morey*, 461 Mich 325, 329-330; 603 NW2d 250 (1999). The first step in determining legislative intent is to consider the plain meaning of the statute's language. *People v Borchard-Ruhland*, 460 Mich 278, 284; 597 NW2d 1 (1999). If the plain and ordinary meaning of the language is clear, no further construction is required. *People v Philabaun*, 461 Mich 255, 261; 602 NW2d 371 (1999).

The prosecution contends that the plain language of MCL 257.709; MSA 9.2409 prohibits any tinting on the driver's and front passenger's windows, regardless of the degree of visibility or transparency. We agree.

MCL 257.709; MSA 9.2409 provides, in pertinent part:

(1) A person shall not drive a motor vehicle with any of the following:

> (a) A sign, poster, *nontransparent material, window application, reflective film, or nonreflective film upon* or in the front windshield, *the side windows immediately adjacent to the driver or front passenger*, or the sidewings adjacent to and forward of the driver or front passenger, except that a tinted film may be used along the top edge of the windshield and the side windows or sidewings immediately adjacent to the driver or front passenger if the material does not extend more than 4 inches from the top of the windshield, or lower than the shade band, whichever is closer to the top of the windshield.

(b) *A rear window or side window to the rear of the driver* composed of, covered by, or *treated with a material that creates a total solar reflectance of 35% or more* in the visible light range, including a silver or gold reflective film. [Emphasis added.]

The emphasized language of subsection (a) clearly demonstrates that it is illegal to apply any material with "tinting" properties to the front driver's or passenger's windows, except for a four-inch shade band similar to what is commonly found on windshields. Nowhere in subsection (a) is reference made to a particular degree or darkness of tint required before the prohibition of the statute kicks in. Such reference, rather, is found in subsection (b), wherein treatment of rear passenger windows and the rear windscreen is limited to material with a solar reflectance of less than 35%. In this case, because defendant's vehicle was a two-door car, the only window on which tint could legally have been applied was the rear windshield.

At defendant's preliminary examination, both officers explicitly testified that tinting material was illegally applied to both the driver's and passenger's windows of defendant's car. At the motion hearing in the circuit court, however, the majority of the testimony concerning the basis for the stop was provided by Woodward, who at no time explicitly identified which windows were in violation of the statute.[1] Apparent miscommunication on this issue, between the attorneys, the officer witnesses and the court, seems to have led to some of the confusion evident during the hearing as attempts were made to apply the relevant portion of the statute to the instant facts.

The focus of defense counsel's questioning during the motion hearing, and of the court's interjected inquiries and ultimate decision, was the issue of the transparency of the tinted material applied to the windows of defendant's car. Woodward twice responded to questions regarding the officers' failure to test the darkness of the tint by stating simply that "no tinting is allowed at all."[2] Johnson, meanwhile, testified that no testing was necessary because there is no applicable percentage law concerning materials applied to the driver's or front passenger's windows. Johnson also testified that from two to five vehicle lengths behind defendant's car, he could see into the car well enough to determine the presence of two occupants. The court rested its decision on an interpretation of the statute requiring nontransparency of any tinting material applied to the car's windows for the tint to be considered illegal. Because the officer's had not established an inability to see through the tinted windows, the court deemed the stop improper.

---

[1] Woodward did testify that all the windows, except for the front windshield, were tinted. He did not, however, clearly explain the relevance of defendant's car being a two-door, rather than a four-door.

[2] The trial court declared Woodward's testimony "legally inaccurate." We believe that although in consideration of the entire statute his response is obviously not a proper statement of the law, it seems clear that Woodward's testimony was based on a presumption that because the car in question was a two-door, all questioning concerned only the front driver's and passenger's windows. Under such circumstance, and assuming he would also concede the provision's exception for a four-inch shade band, his responses are understandable and correct.

In detailing its prohibitions, subsection (a) of the statute includes no derivative of the word "tint." Rather, it essentially contains a list of defined products which on reasonable interpretation can be said to encompass various items with tinting properties.[3] Only one of the listed items contains the descriptor "nontransparent." The other items, "window application, reflective film or nonreflective film," are not similarly modified. Accordingly, the trial court erred in requiring a showing of nontransparency and the fact that the officers could see into the vehicle well enough to make out two occupants did not render the stop improper.

Reversed and remanded. We do not retain jurisdiction.

/s/ Richard Allen Griffin
/s/ Donald E. Holbrook, Jr.
/s/ William B. Murphy

[3] Our analysis disregards the statute's first two listed items, a "sign" or "poster." These are items that would clearly obstruct vision through vehicle windows, the general theme of this statute, but obviously are not items commonly recognized as "tinting material."