STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 25, 2003
v	No. 242271 Jackson Circuit Court
HARVEY STONE III, Defendant-Appellant.	LC No. 01-004407-FH

Before: Sawyer, P.J., and Griffin and Smolenski, JJ.

PER CURIAM.

Defendant was convicted of two counts of carrying a concealed weapon, MCL 750.227, and one count of possession of a switchblade knife, MCL 750.226a. Before trial, defendant filed a motion to suppress his pre-arrest statements and the weapons seized from his car, which the trial court denied. Defendant appeals as of right challenging the trial court's ruling. We affirm.

This Court reviews for clear error the trial court's findings of fact in deciding a motion to suppress evidence, and it reviews de novo the trial court's ultimate decision regarding a motion to suppress. *People v Wilson*, 257 Mich App 337, 351; 668 NW2d 371 (2003). A decision is clearly erroneous if this Court is left with the definite and firm conviction that a mistake has been made. *People v Christie (On Remand)*, 206 Mich App 304, 308; 520 NW2d 647 (1994).

On July 25, 2001, at around 1:50 a.m., an officer noticed defendant driving erratically and pulled him over. After questioning defendant, defendant admitted that there was a gun in the trunk. A search of the vehicle's trunk revealed a .357 handgun in a container. Several .40 caliber bullets, a .40 caliber Glock handgun, its magazine clip, and a switchblade were found in the vehicle's compartment.[1]

Defendant first argues that the initial stop was unreasonable given the officer's inconsistent testimony regarding his observations of defendant's driving. "Police officers may make a valid investigatory stop if they possess 'reasonable suspicion' that crime is afoot." *People v Champion*, 452 Mich 92, 98-99; 549 NW2d 849 (1996), citing *Terry v Ohio*, 392 US 1;

[1] The vehicle's compartment refers to its interior, the inside space accessed by the vehicle's doors.

88 S Ct 1868; 20 L Ed 2d 889 (1968). The officer in this case was equivocal as to the exact circumstances that caused him to turn around and follow defendant's vehicle. However, he consistently testified that, as he followed defendant, defendant's vehicle weaved across the road, crossing over the centerline and the shoulder. Thus, the officer had a reasonable suspicion that defendant might be driving under the influence. *Christie, supra* at 309. The fact that there were no painted lines on the road is irrelevant, particularly because defendant's erratic driving was itself a moving violation under MCL 257.634(1). And a stop because of a traffic violation is valid. *Whren v United States*, 517 US 806, 810; 116 S Ct 1769; 135 L Ed 2d 89 (1996). Under these circumstances, we find that the stop of defendant's vehicle was reasonable.

Defendant next argues that his pre-arrest statements should have been suppressed because the traffic stop went beyond roadside questioning and became a custodial interrogation, thereby requiring *Miranda*[2] warnings, when the officer administered a preliminary breathalyzer test to defendant and questioned defendant regarding the presence of marijuana and firearms in the car. We disagree.

A motorist who is detained pursuant to a routine traffic stop is not "in custody" for *Miranda* purposes. *Berkemer v McCarty*, 468 US 420, 442; 104 S Ct 3138; 82 L Ed 2d 317 (1984). Rather, such a stop is analogous to a *Terry*[3] stop. *Id*. at 439. The scope of a *Terry* stop must be reasonably related to the circumstances that justified the stop. *Champion, supra* at 98. As long as the stop is proper, "the officer is permitted to briefly detain the vehicle and make reasonable inquiries aimed at confirming or dispelling his suspicions." *People v Rizzo*, 243 Mich App 151, 156; 622 NW2d 319 (2000). Given defendant's erratic driving and the officer's reasonable suspicion that defendant was driving under the influence of alcohol, we find that the administration of a preliminary breathalyzer test was within the scope of the stop. See also MCL 257.625a(2). Driving under the influence of a controlled substance could also explain defendant's erratic driving and the officer testified that, as he spoke to defendant, he noticed the smell of "unburnt fresh marijuana." Having ruled out alcohol as the reason for defendant's erratic driving, we find that the officer's question regarding marijuana was also within the scope of the stop.

Lastly, we address defendant's objection to the officer's question regarding the presence of weapons in the vehicle. Defendant contends that because he was stopped for a traffic violation and suspicion of drunk driving, the subject of firearms was outside the scope of the stop. However, defendant ignores this Court's decision in *People v Edwards*, 158 Mich App 561; 405 NW2d 200 (1987), a factually similar case. *Edwards* held that "where an officer makes a routine stop of a vehicle for a traffic offense which is a civil infraction, there is no obligation to give *Miranda* warnings where the questions asked relate to the existence of weapons in the vehicle." *Id*. at 564. The Court recognized that such a question, in the context of a routine stop, "did not create the sort of coercive atmosphere" where *Miranda* warnings were required and "the question legitimately related to the officer's concern for his safety." *Id*.

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[2] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

[3] *Terry, supra*.

Likewise, in this case, particularly given that the officer observed defendant reaching behind the passenger area and then quickly righting himself when the officer activated his overhead lights, the question was reasonably related to concern for the officer's safety. We reject defendant's assertion that the officer's admission that defendant was not free to leave establishes that *Miranda* warnings were required. Inherent in the concept of a *Terry* stop is the right of the police to temporarily detain an individual to confirm or dispel their suspicions. Therefore, it is erroneous to focus solely on whether defendant was free to leave. *People v Bloxson*, 205 Mich App 236, 242; 517 NW2d 563 (1994), citing *Florida v Bostick*, 501 US 429, 435-436, 439-440; 111 S Ct 2382; 115 L Ed 2d 389 (1991). Here, defendant voluntarily answered the officer's question and informed him that there was a gun in the trunk. Taking into consideration the totality of the circumstances in this case and this Court's decision in *Edwards, supra*, we find that *Miranda* warnings were not required before the officer inquired about the presence of weapons in the car. We also note that in accordance with the above conclusions, defendant concedes that seizure of the gun in the trunk was proper because defendant could not produce a weapons permit for the gun. MCL 750.227(2).

Defendant also argues that the gun and knife found in the vehicle's compartment should have been suppressed because the officer did not obtain a search warrant. Defendant's argument fails for several reasons. First, the officer testified that he noticed the smell of fresh marijuana as he was speaking to defendant. The odor of marijuana alone gave the officer probable cause to conduct a warrantless search of defendant's car. *People v Kazmierczak*, 461 Mich 411, 426; 605 NW2d 667 (2000).

Second, defendant concedes that after he was unable to produce a weapons permit for the gun in the trunk, the officer had probable cause to arrest him. MCL 750.227. "A search conducted immediately before an arrest may be justified as incident to arrest if the police have probable cause to arrest the suspect before conducting the search." *Champion, supra* at 115-116, citing *Rawlings v Kentucky*, 448 US 98; 100 S Ct 2556; 65 L Ed 2d 633 (1980). Our Supreme Court reiterated the justification for this rule as follows:

> Since the officers had probable cause to arrest [the defendant] and the other occupants, the search was proper: had the occupants been arrested, they could have been searched incident to arrest. The validity of the search is not negated by the failure of the officers to arrest the occupants. [*Champion, supra* at 116; quoting *People v Arterberry*, 431 Mich 381, 384; 429 NW2d 574 (1988).]

Therefore, because the officer in this case immediately arrested defendant after finding the Glock handgun behind the passenger seat, the warrantless search was valid. The knife was then found in a valid search incident to defendant's arrest. *Champion, supra* at 115.

Accordingly, we hold that the trial court did not err in denying defendant's motion to suppress.

Affirmed.

/s/ David H. Sawyer
/s/ Richard Allen Griffin
/s/ Michael R. Smolenski