

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JOHN HENRY REED,

Defendant-Appellee.

UNPUBLISHED

January 6, 2004

No. 242223

Wayne Circuit Court

LC No. 02-004771

Before: Donofrio, P.J., and Griffin and Jansen, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendant's motion to suppress and dismissing a charge of carrying a concealed weapon, MCL 750.227. We reverse.

Officers received a report of two tan SUVs driving recklessly, while one occupant brandished a weapon. The officers testified that they observed two light-colored SUVs in a parking lot near the scene and stopped defendant's vehicle after it failed to signal a turn. A weapon was spotted in plain view under the driver's seat. At the evidentiary hearing, the officers testified that the SUV involved in the crime was tan. Defendant testified that his SUV was silver and he had signaled his turn. The trial court found that police did not have probable cause to stop a silver SUV and granted the motion to suppress.

This Court will review a lower court's factual findings in a suppression hearing for clear error, and those findings will be affirmed unless the Court is left with a definite and firm conviction that a mistake has been made. *People v Davis*, 250 Mich App 357, 363; 649 NW2d 94 (2002). The lower court's ultimate ruling on the motion is reviewed de novo. *Id.*

Where a police officer has probable cause to believe the defendant was in violation of a traffic law, a stop is permissible. *Id.* Here, the officers testified that defendant did not use his turn signal, while defendant claimed that he did. The court did not make a finding as to this fact.

The court based its decision on the fact that the officers lacked probable cause to stop a silver vehicle. Brief investigative stops short of arrest are permitted where police officers have a reasonable suspicion of ongoing criminal activity. *People v Faucett*, 442 Mich 153, 168; 499 NW2d 764 (1993). The totality of the circumstances test is to be used in determining the reasonableness of the action. *People v Christie (On Remand)*, 206 Mich App 304, 308; 520 NW2d 647 (1994). Fewer foundational circumstances are necessary to support a finding of

reasonableness when moving vehicles are involved and fewer facts are necessary to support a stop than a stop and search. *Id.* at 308-309.

The facts support the finding of a reasonable suspicion that defendant's vehicle was involved in the crime. The vehicle was described alternatively as tan, beige, gray, silver, or simply light-colored. There is not a great variance in these colors. This, together with the fact that two SUVs were involved in the criminal activity and the officers found two SUVs together near the scene at 3 a.m., leads to a reasonable suspicion that these vehicles may have been involved in the crime. Reviewed de novo, the totality of the circumstances supports the finding of a reasonable suspicion to conduct a stop. Once the stop occurred, the weapon was found in plain view and there was no search.

Reversed.

/s/ Pat M. Donofrio
/s/ Richard Allen Griffin
/s/ Kathleen Jansen