STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 12, 2009
v	No. 281973 Kalkaska Circuit Court
JEFFREY DAVID GREENIA, Defendant-Appellant.	LC No. 06-002792-FH

Before: Murphy, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

The court convicted defendant of operating a vehicle while intoxicated (third offense), MCL 257.625(1), (8), and operating a vehicle in violation of license restrictions, MCL 257.312, and sentenced him to concurrent jail terms of 6 months for the OWI conviction and 90 days for operating a vehicle in violation of license restrictions. Defendant appeals as of right. We affirm.

After 11:00 p.m. on October 7, 2006, a Kalkaska County Sheriff's Department Deputy was dispatched to a residential alarm at a seasonal residence. The deputy found tire tracks in the driveway and a door ajar at the vacant residence. About 15 minutes into his investigation, the deputy heard a vehicle accelerating away from the area. The vehicle was the only one on the lightly traveled road, was close enough to the residence for the deputy to clearly see it, and was accelerating at a rate that caused rocks to be thrown from its tires. The deputy suspected that the occupant of the vehicle might have been involved in triggering the alarm during a possible illegal entry at the residence and so decided to make a traffic stop of the vehicle that defendant was driving.

After stopping the vehicle, the deputy noted that defendant's eyes were glassy and that he seemed confused. Defendant's spoke with slurred speech and had difficulty following the deputy's instructions and locating the documents the deputy requested. Defendant acknowledged that he had been drinking at a local bar. Defendant failed three field sobriety tests. He also produced a restricted driver's license that indicated that he could only drive between 6:00 a.m. and 7:00 p.m. The deputy arrested defendant for OWI.[1]

[1] Because defendant refused to take a Breathalyzer test, the deputy obtained a warrant for a blood (continued…)

Defendant contends that the deputy lacked a reasonable suspicion that he was involved in criminal activity at the residence to conduct an investigative stop. We disagree.

"The Fourth Amendment of the United States Constitution and the analogous provision in Michigan's Constitution guarantee the right of the people to be free from unreasonable searches and seizures." *People v Champion*, 452 Mich 92, 97; 549 NW2d 849 (1996) (footnote omitted). "Searches and seizures conducted without a warrant are unreasonable per se, subject to several specifically established and well-delineated exceptions." *Id.* at 98. An exception exists when the police have a reasonable and articulable suspicion "that crime is afoot." *Id.*, citing *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968). Police officers may make a valid investigatory stop if they possess a reasonable suspicion that a person has engaged, or is about to engage, in criminal activity. *Id.*

The deputy possessed a reasonable suspicion that defendant engaged in criminal activity at the residence to make the investigative stop based on the following factors: (1) an alarm was triggered at a seasonal, vacant residence; (2) tire tracks were in the driveway; (3) a door to the screened-in porch was ajar; (4) defendant's vehicle rapidly accelerated and sped away from a lightly traveled area proximate in space and time to the triggering of the alarm; and (5) the deputy's belief, based on his experience, that there had been an illegal entering of the residence and that defendant might have been involved in the crime. Under these circumstances, an investigatory stop was lawful. *Terry, supra* at 21; *Champion, supra* at 99-100.

Affirmed.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey

(…continued)

alcohol test, which revealed a blood alcohol level of .23.