

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

TOREESE HODGERS,

Defendant-Appellee.

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UNPUBLISHED

February 11, 2010

No. 287306

Wayne Circuit Court

LC No. 08-003628-01

Before: Servitto, P.J., and Fort Hood and Stephens, JJ.

STEPHENS, J. (*dissenting*)

I would affirm the trial court's order dismissing the firearm charges brought against defendant. I agree with the majority that the initial traffic stop was supported by probable cause. However, I conclude that the discovery of the firearm evidence occurred after the police officer exceeded the scope of the stop and improperly detained defendant.

As the majority acknowledges, a detention in the wake of a traffic stop is typically only permitted to last as long as it takes to issue a traffic citation. *People v Burrell*, 417 Mich 439, 453; 339 NW2d 403 (1983). A police officer may not detain the subject of the traffic stop for questioning unrelated to the traffic stop unless that additional questioning is supported by a reasonable suspicion. *Id.* at 441. "A traffic stop is reasonable as long as the driver is detained only for the purpose of allowing an officer to ask reasonable questions concerning the violation of law and its context for a reasonable period." *People v Williams*, 472 Mich 308, 315; 696 NW2d 636 (2005). Despite recognizing the above-cited binding precedent, the majority concludes that Officer O'Shea's questioning of defendant was not improper in light of the recent holding in *Arizona v Johnson*, \_\_\_ US \_\_\_, 129 S Ct 781, 788; 172 L Ed 2d 694 (2009). For the reasons stated below, I disagree with the majority's application of *Johnson* to the present case.

As the majority explains, *Johnson* provides that, "[a]n officer's inquiries into matters unrelated to the justification for the traffic stop ... do not convert the encounter into something other than a lawful seizure, *so long as those inquiries do not measurably extend the duration of the stop* [emphasis added]." *Johnson, supra*, 129 S Ct at 788. The Supreme Court did not expound upon the meaning of the term "measurably extend." However, by definition, any extension in time, no matter how slight, is measurable. Upon reviewing the record, I cannot confidently conclude that Officer O'Shea's additional questioning of defendant did not result in an extension of the duration of the traffic stop.

More importantly, I conclude that the decision in *Johnson* does not necessarily apply to the laws of search and seizure in Michigan. “Both the United States Constitution and the Michigan Constitution guarantee the right against unreasonable searches and seizures. The Michigan Constitution in this regard is generally construed to provide the same protection as the Fourth Amendment of the United States Constitution.” *People v Jones*, 279 Mich App 86, 90-91, 755 NW2d 224 (2008) (citations omitted). As the Michigan Supreme Court has stated, “[i]n interpreting our Constitution, we are not bound by the United States Supreme Court’s interpretation of the United States Constitution, even where the language is identical.” *People v Goldston*, 470 Mich 523, 534; 682 NW2d 479 (2004). There is not a “conclusive presumption” that our interpretation must follow federal law. *Id.* at 534. “Rather, we must determine what law ‘the people have made.’” *Sitz v Dep’t of State Police*, 443 Mich 744, 759; 506 NW2d 209 (1993), quoting *People v Harding*, 53 Mich 481, 485, 19 NW 155 (1884). When determining if it is appropriate to interpret the Michigan Constitution differently than the United States Constitution, it is appropriate to consider, among other factors, the history of the state constitution and common law. *People v Collins*, 438 Mich 8, 31 n. 39; 475 NW2d 684 (1991). I conclude that the decisions in *Burrell*, *supra*, and *Williams*, *supra*, clearly establish that Michigan has historically protected its citizens from questioning that is unrelated to the purpose of a traffic stop where that questioning is not prompted by a reasonable suspicion of criminal activity. The *Johnson* decision relied upon by the majority is contrary to the jurisprudence of this state. The trial court properly applied Michigan law in reaching the conclusion that the evidence of the firearms was inadmissible.

/s/ Cynthia Diane Stephens