

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

THOMAS RAY ZACKERY,

Defendant-Appellee.

UNPUBLISHED

September 23, 2010

No. 292619

Wayne Circuit Court

LC No. 09-006615-FH

Before: BORRELLO, P.J., and JANSEN and BANDSTRA, JJ.

PER CURIAM.

The prosecution appeals as of right the circuit court order dismissing a charge of possession with the intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), against defendant. We reverse and order that the charge be reinstated. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

An officer with the Hamtramck Police Department requested a search warrant for 12810 Mitchell in Detroit based on two separate controlled purchases of cocaine from that location by an unnamed informant. As a result of that search, defendant was arrested and charged with possession with intent to deliver less than 50 grams of cocaine. Defendant moved to dismiss the charges asserting that the Hamtramck Police Department lacked the authority to execute the search warrant on a residence within the City of Detroit. The district court bound defendant over as charged, but the circuit court dismissed the charges, finding that there was “no statutory authority which would allow for a police officer in one city to execute a search warrant in another city without contacting the police authority in that other city. It was not proper jurisdiction and it’s a threat to the safety of both sets of police officers as well as the citizens of the city in which they are going.”

This Court reviews the circuit court’s decision to dismiss criminal charges against a defendant for an abuse of discretion. *People v Stone*, 269 Mich App 240, 242; 712 NW2d 165 (2005). “An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling made.” *Id.*, citing *People v Snider*, 239 Mich App 393, 419; 608 NW2d 502 (2000). However, the circuit court’s ruling turns on the interpretation of MCL 764.2, and the determination whether the Legislature intended that a violation of that provision should result in exclusion of evidence and the dismissal of criminal charges. This Court reviews issues of law, including constitutional

issues and the interpretation and application of statutes, de novo. *People v Keller*, 479 Mich 467, 473-474; 739 NW2d 505 (2007); *Stone*, 269 Mich App 240, 242; 712 NW2d 165 (2005).

There is no dispute that the warrant in this case was lawfully obtained. Defendant readily concedes that two controlled buys provided adequate probable cause to obtain a search warrant for the Detroit residence. However, defendant contends that the Hamtramck Police Department was without authority to *execute* the legally obtained warrant absent any involvement with the Detroit Police Department.

MCL 764.2a, provides:

(1) A peace officer of a county, city, village, township, or university of this state may exercise the authority and powers of a peace officer outside the geographical boundaries of the officer's county, city, village, township, or university under any of the following circumstances:

(a) If the officer is enforcing the laws of this state in conjunction with the Michigan state police.

(b) If the officer is enforcing the laws of this state in conjunction with a peace officer of any other county, city, village, township, or university in which the officer may be.

(c) If the officer has witnessed an individual violate any of the following within the geographical boundaries of the officer's county, city, village, township, or university and immediately pursues the individual outside of the geographical boundaries of the officer's county, city, village, township, or university:

(i) A state law or administrative rule.

(ii) A local ordinance.

(iii) A state law, administrative rule, or local ordinance, the violation of which is a civil infraction, municipal civil infraction, or state civil infraction.

(2) The officer pursuing an individual under subsection (1)(c) may stop and detain the person outside the geographical boundaries of the officer's county, city, village, township, or university for the purpose of enforcing that law, administrative rule, or ordinance or enforcing any other law, administrative rule, or ordinance before, during, or immediately after the detaining of the individual. If the violation or pursuit involves a vessel moving on the waters of this state, the officer pursuing the individual may direct the operator of the vessel to bring the vessel to a stop or maneuver it in a manner that permits the officer to come beside the vessel.

The purpose of this statute is to protect the rights and autonomy of local governments, not the rights of criminal defendants. *People v Hamilton*, 465 Mich 526, 535; 638 NW2d 92 (2002),

overruled in part on other grounds *Bright v Littlefield*, 465 Mich 770, 775-776 n 5; 641 NW2d 587 (2002); *People v McCrady*, 213 Mich App 474, 480-481; 540 NW2d 718 (1995); *People v Clark*, 181 Mich App 577, 581; 450 NW2d 75 (1989).

In *Clark*, this Court directly addressed the concern raised by the circuit court here regarding the safety of both sets of police officers. The defendant in *Clark* was arrested by an undercover officer who, during a controlled buy, was acting outside of his jurisdiction and without notifying or involving the officers of that other jurisdiction. While acknowledging that there may have been a violation of MCL 764.2a, this Court found that there was no violation of the defendant's constitutional rights. *Clark*, 181 Mich App at 580. This Court wrote:

Furthermore, the [Supreme] Court [in *People v Meyer*, 424 Mich 143; 379 NW2d 59 (1985)] noted:

“The defendant argues, quite correctly, that aside from the duty of law enforcement personnel to scrupulously adhere to statutes directly circumscribing enforcement actions, and the question of the officer's personal liability in failing to do so, there is the very practical risk that without adherence to the statute in cases such as this, law enforcement efforts might overlap, resulting not only in wasted resources, but in possible tragic confrontations between different ‘undercover’ forces acting upon the same investigation, each unaware of the presence of the other.

In addition, . . . [as noted in the] concurring opinion:

The nature and extent of undercover surveillance activity is a matter for decision primarily by the community in which such activity may take place. What might be thought to be an appropriate method of law enforcement in western or northern Michigan might not be thought to be appropriate in Ann Arbor, East Lansing, or Detroit.

All of this leads to the conclusion that the purpose of MCL 764.2a . . . is not to protect the rights of criminal defendants, but rather to protect the rights and autonomy of local governments.

Thus, we conclude that no recognized basis exists in this case that would justify application of the exclusionary rule, and it was error for the district court to suppress the evidence and dismiss the charge against defendant. [*Clark*, 181 Mich App at 581. (quotation marks and citations omitted).]

Similarly, in *Hamilton*, 465 Mich at 529, the Supreme Court addressed the question whether the Legislature intended that a violation of MCL 764.2a should result in the exclusion of evidence. The police officer in *Hamilton* observed the defendant driving during the early morning hours; the vehicle was without operating taillights and it swerved off the roadway. The officer was out of his jurisdiction when he stopped the driver on the suspicion that the driver was

under the influence of alcohol. *Id.* at 527-528. The officer admitted that he was not in “hot pursuit” of the defendant and that he was not acting in conjunction with other law enforcement agencies having jurisdiction. *Id.* at 528-530. The defendant moved to suppress the evidence regarding his field sobriety test and any other evidence related to the stop based on a violation of MCL 764.2a. The district court bound the defendant over for trial, but the circuit court granted the defendant’s motion to suppress and dismissed the case. This Court affirmed the dismissal. *Id.* at 528. However, our Supreme Court reversed, explaining that:

It is clear from previous decisions of this Court that a statutory violation like the one in this case does not necessarily require application of an exclusionary rule. The question in such cases is whether the Legislature intended to apply the drastic remedy of exclusion of evidence. In several recent decisions we have found such intent lacking. See *People v Sobczak-Obetts* [463 Mich 687, 694; 625 NW2d 764 (2001)] (failure to comply with the statutory requirement that an affidavit in support of a search warrant be left with the defendant at the time of execution of the warrant, MCL 780.654, 780.655; *People v Stevens* [(After Remand), 460 Mich 626, 631; 597 NW2d 53 (1999)] (failure to comply with the “knock and announce” statute, MCL 780.656, in executing a search warrant).

As in *Sobczak-Obetts* and *Stevens*, we find no indication in the language of MCL 764.2a that the Legislature intended to impose the drastic sanction of suppression of evidence when an officer acts outside the officer’s jurisdiction. Rather, we believe that the language supports the analysis of several Court of Appeals decisions that the statute was intended, not to create a new right of criminal defendants to exclusion of evidence, but rather to “protect the rights and autonomy of local governments” in the area of law enforcement. [*Id.* at 534-535.]

Likewise, in *People v Hawkins*, 468 Mich 488; 668 NW2d 602 (2003), our Supreme Court held that, absent specific legislative intent, suppression of evidence for such violations was not warranted. At the outset, the Supreme Court noted that at issue in *Hawkins*, was whether a statutory or court rule violation necessitated the suppression of evidence; there, as here, there was no concern with the constitutional validity of the underlying warrants. *Id.* at 497-498. The Court explained, “where there is no determination that a statutory violation constitutes an error of constitutional dimensions, application of the exclusionary rule is inappropriate unless the plain language of the statute indicates a legislative intent that the rule be applied.” *Id.* at 507.

Defendant seeks to take the case out of the purview of these decisions by arguing that it was not a mere *statutory* violation that occurred, but one of *constitutional* dimensions. This argument is without merit, especially considering defendant’s acknowledgement that there was sufficient probable cause to obtain the search warrant and that the warrant was properly issued. Because the statutory violation did not constitute an error of constitutional dimensions, dismissal was inappropriate in the absence of plain language in the statute indicating a legislative intent that the exclusionary rule be applied. *Hawkins*, 468 Mich at 507. In *People v Anstey*, 476 Mich 436, 448; 719 NW2d 579 (2006), the Supreme Court added, “we hold that dismissal, which is an even more drastic remedy [than the suppression of evidence], is not an appropriate remedy for a

statutory violation unless the statute clearly provides otherwise.” Therefore, the circuit court erred by dismissing defendant’s case based on a violation of MCL 764.2a.

We reverse. We order that the criminal charge against defendant be reinstated. We do not retain jurisdiction.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Richard A. Bandstra