

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DIQUAN MICHAELS FERGUSON,

Defendant-Appellant.

UNPUBLISHED

November 18, 2010

No. 292978

Oakland Circuit Court

LC No. 09-225516-FH

Before: MURPHY, C.J., and METER and SHAPIRO, JJ.

PER CURIAM.

Defendant was convicted by a jury of felon in possession of a firearm, MCL 750.224f, carrying a concealed weapon (CCW), MCL 750.227, driving while license suspended (DWLS), MCL 257.904, and possession of a firearm during the commission of a felony, second offense, MCL 750.227b. Defendant was sentenced as a second habitual offender, MCL 769.10, to concurrent terms of 28 to 90 months' imprisonment for both the felon in possession and the CCW convictions, and to a consecutive term of five years' imprisonment for the felony-firearm conviction. The court also imposed a 136-day sentence for the DWLS conviction and credited defendant for 136 days' served. Defendant appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole argument on appeal is that the police engaged in an illegal search and seizure because the officer who initiated the traffic stop of defendant's vehicle should have observed a temporary license plate that was allegedly affixed to the back window. Defendant argues that because he committed no other apparent traffic or criminal violations, the police had no reason to follow through with the stop and continue with their inquiries. Therefore, any evidence found in his vehicle should have been suppressed. We disagree.

This Court ordinarily reviews de novo a trial court's ultimate ruling on a motion to suppress evidence, although underlying factual findings are reviewed for clear error. *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005). However, defendant failed to raise his challenge to the constitutionality of the police stop below; therefore, our review is for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). In addition, this Court must "exercise its discretion in deciding whether to reverse" and should only reverse when the plain error resulted in the conviction of an actually innocent defendant or when the error seriously affected the fairness of the judicial proceedings. *Id.*

In *Williams*, 472 Mich at 312, the defendant moved to suppress evidence of narcotics found in his vehicle, “asserting that the search and seizure were predicated on an illegal detention.” Our Supreme Court set forth the applicable standards, stating:

In assessing the protections created by [the Fourth] [A]mendment, the United States Supreme Court has long held that the touchstone of the Fourth Amendment is reasonableness. Reasonableness is measured by examining the totality of the circumstances. Because of endless variations in the facts and circumstances implicating the Fourth Amendment, reasonableness is a fact-intensive inquiry that does not lend itself to resolution through the application of bright-line rules.

In analyzing the propriety of the detention here, we apply the standard set forth in *Terry v Ohio*, 392 Mich 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968). Under *Terry*, the reasonableness of a search or seizure depends on whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place.

In this case, there is no dispute that the initial traffic stop was occasioned by defendant's speeding, and was therefore based on probable cause and was reasonable.

As a threshold matter, the Court of Appeals erred when it agreed with defendant that the purpose of this traffic stop was fully effectuated when defendant handed [the trooper] his driver's license and other requested paperwork. This view of the essential nature of the traffic stop imposes an unreasonable restriction on an officer's ability to investigate a violation of the law.

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. The determination whether a traffic stop is reasonable must necessarily take into account the evolving circumstances with which the officer is faced. . . . [W]hen a traffic stop reveals a new set of circumstances, an officer is justified in extending the detention long enough to resolve the suspicion raised.

It is no violation of the Fourth Amendment for an officer to ask reasonable questions in order to obtain additional information about the underlying offense and the circumstances leading to its commission. For example, in addition to asking for the necessary identification and paperwork, an officer may also ask questions relating to the reason for the stop, including questions about the driver's destination and travel plans. [*Williams*, 472 Mich at 314-316 (citations and quotations omitted).]

The *Williams* Court emphasized that a police officer has considerable discretion in enforcing the traffic laws and that the discretion can be exercised effectively only if the officer is allowed to ask reasonable questions concerning the context of a traffic offense. *Id.* at 315 n 8.

Implicit in an officer's authority is the power to ask follow-up questions when the initial answers given are suspicious. *Id.* at 316.

Here, the police officer pulled defendant over for not displaying a license plate. The officer testified that defendant's car windows were "dirty" and tinted. A photograph of the vehicle taken at the time of the stop, which was admitted into evidence, reveals that the back window of the vehicle was so dirty that, even if a temporary license (paper plate) was affixed to the rear window, it was not visible from the outside. The officer testified that, during the entire stop, she "never did observe [a] paper plate." There is no evidence in the record indicating that a paper plate was indeed affixed to the rear window. Although she was unsure how it came to be there, the police officer did testify that "[t]here was a paper plate with the paperwork." This would suggest that, although there was a paper plate, it was not affixed to the window. The officer, upon making contact with defendant as he sat in the car, asked for defendant's driver's license and paperwork for the vehicle. Defendant, who appeared nervous to the officer, immediately volunteered that he just bought the vehicle, and he handed over "some" paperwork showing a recent purchase, which paperwork the officer later identified as the vehicle's registration. The officer did not state that this particular paperwork included the vehicle's paper plate. And she did testify that she did not become aware of the paper plate until after the stop and search was completed. Defendant, after stating that he had just purchased the car, asked the officer if she wanted to see his state identification card, but she demanded his driver's license. Defendant then admitted that his license was suspended and that the vehicle was purchased in his sister's name because of his suspension.

Driving with a suspended license is an arrestable offense in Michigan, MCL 257.904(3)(a) and (b), and a check of the Law Enforcement Information Network (LEIN) revealed outstanding warrants for defendant's arrest. The police placed defendant under arrest, patted him down, and then searched his vehicle. Officers discovered six plastic baggies containing marijuana in the center console and a stolen firearm under some seats.

MCL 257.225 provides in relevant part:

(1) A registration plate issued for a vehicle shall be attached to the rear of the vehicle. . . .

(2) A registration plate shall at all times be securely fastened in a horizontal position to the vehicle for which the plate is issued so as to prevent the plate from swinging. The plate shall be attached at a height of not less than 12 inches from the ground, measured from the bottom of the plate, in a place and position which is clearly visible. The plate shall be maintained free from foreign materials that obscure or partially obscure the registration information, and in a clearly legible condition.

* * *

(6) A person who violates this section is responsible for a civil infraction.

Because there was no evidence showing that a regular license plate, nor a paper plate, was affixed to the rear of the vehicle, and because, assuming the presence of an affixed paper

plate, it was necessarily obscured, a civil infraction was committed. Accordingly, the police had the right to stop the vehicle and ask reasonable questions concerning the civil infraction, which would include asking for a driver's license and registration, as the officer requested here. These questions revealed a new set of circumstances, i.e., that defendant was driving on a suspended license. The circumstances further evolved when the officer discovered the outstanding arrest warrants when running a LEIN check. Under the totality of the circumstances, the police had the authority to arrest defendant and conduct an inventory search of the vehicle. These actions were reasonable. There was no constitutional violation, and thus there was no error in admitting the evidence found in the vehicle, let alone a plain error. Reversal is unwarranted.

Affirmed.

/s/ William B. Murphy

/s/ Patrick M. Meter

/s/ Douglas B. Shapiro