STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 10, 2011
v	No. 295629 Kalamazoo Circuit Court
DARRIUS RAY WILLIAMS, Defendant-Appellant.	LC No. 08-1924-FH

Before: OWENS, P.J., and MARKEY and METER, JJ.

PER CURIAM.

Defendant appeals as of right, following his bench trial conviction of fourth-degree fleeing and eluding a police officer, MCL 257.602a; operating a motor vehicle while license suspended, MCL 257.904(3)(a); and the denial of his motion for new trial brought under MCR 6.431 and MCR 7.208(B). Defendant was sentenced to 75 days in jail, time served. We affirm.

Defendant first argues that the trial court erred in denying defendant's motion to suppress the testimony of Kalamazoo Township police officer James Rifenberg because it stemmed from an illegal stop. We disagree.

A trial court's findings of fact at a suppression hearing are reviewed for clear error. *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005). A factual finding is clearly erroneous "if, after a review of the entire record, an appellate court is left with a definite and firm conviction that a mistake has been made." *People v Swirles (After Remand)*, 218 Mich App 133, 136; 553 NW2d 357 (1996). However, questions of law, including constitutional and statutory construction, relevant to a suppression motion are reviewed de novo, *People v Keller*, 479 Mich 467, 473-474; 739 NW2d 505 (2007), as is the trial court's ultimate decision regarding a motion to suppress. *Williams*, 240 Mich App at 319.

Defendant argues that the police officer improperly detained him without justification, and that the testimony of Officer Rifenberg should have been suppressed as the fruit of a poisonous tree. See *Wong Sun v United States*, 371 US 471, 487-488, 83 S Ct 407, 9 L Ed 2d 441 (1963). The Fourth Amendment permits police to stop and briefly detain, and conduct a limited search of the outer clothing of, a person in response to a reasonable suspicion that criminal activity may be at hand. *Terry v Ohio*, 392 US 1, 30-31, 88 S Ct 1868, 20 L Ed 2d 889 (1968). Evidence obtained in the course of a violation of a suspect's rights under the Fourth Amendment of the United States Constitution is subject to suppression at trial. *People v*

Cartwright, 454 Mich 550, 557-558, 563 NW2d 208 (1997). See also *Mapp v Ohio*, 367 US 643, 81 S Ct 1684, 6 L Ed 2d 1081 (1961) (incorporating the Fourth Amendment against the states under the Fourteenth Amendment).

In *People v Jones*, 260 Mich App 424, 427-429; 678 NW2d 627 (2004), this Court held that because drivers do not have a reasonable expectation of privacy in their openly displayed license plates, the police may run a computer check of the license plate without observing a traffic violation. The police may also assume that the driver of a vehicle is the registered owner, unless they have evidence to the contrary. *Id.* at 430. It is a misdemeanor for a person to operate a vehicle on the road if the person's driver's license has been suspended or revoked. MCL 257.904(1). Therefore, the fact that the registered owner of the vehicle had a suspended license gave Officer Rifenberg reasonable suspicion that a crime was being committed. It was appropriate for Officer Rifenberg to make police/citizen contact at this point. After initially pulling alongside defendant's van and discerning defendant's identity, Officer Rifenberg had probable cause to arrest him for driving with a suspended license. Defendant's argument that Officer Rifenberg had no probable cause to arrest defendant is contrary to established case law.

Furthermore, because Officer Rifenberg was "acting in the lawful performance of his or her duty," pursuant to MCL 257.602a(1) defendant's argument that he could not be found guilty of fleeing and eluding was also without merit.

Next, defendant argues that the trial court abused its discretion in denying defendant's motion to dismiss because the police department's destruction of the original videotape of his arrest deprived him of possible exculpatory evidence and thereby denied him a fair trial. We disagree.

We review a trial court's decision on a motion to dismiss for an abuse of discretion. *People v McCartney*, 72 Mich App 580; 250 NW 2d 135 (1976). An abuse of discretion occurs when the trial court's ruling falls outside the principled range of outcomes. *People v Smith*, 482 Mich 292, 300; 754 NW 2d 284 (2008).

Due process guaranteed by US Const, Am XIV requires that the prosecution not suppress material evidence that is favorable to the defense. *Brady v Maryland*, 373 US 83; 83 S Ct 1194; 10 L Ed 2d 215 (1963); *People v Lester*, 232 Mich App 262; 591 NW2d 267 (1998); *People v Fox (After Remand)*, 232 Mich App 541; 591 NW2d 384 (1998). Misconduct of the police is charged to the prosecution. *People v Morris*, 77 Mich App 561, 563; 258 NW2d 559 (1977). To establish a *Brady* violation, a defendant must show:

> (1) that the state possessed evidence favorable to the defendant; (2) that he did not possess the evidence nor could he have obtained it himself with any reasonable diligence; (3) that the prosecution suppressed the favorable evidence; and (4) that had the evidence been disclosed to the defense, a reasonable probability exists that the outcome of the proceedings would have been different. [*Fox* (After Remand), 232 Mich App at 549].

As a corollary, due process also requires that the police or the prosecution not act in bad faith to dispose of potentially exculpatory evidence. Under the Due Process Clause, the Supreme Court

has developed "what might loosely be called the area of constitutionally guaranteed access to evidence." *California v Trombetta*, 467 US 479, 485; 104 S Ct 2528; 81 L Ed 2d 413 (1984) (quoting *United States v Valenzuela-Bernal*, 458 US 858, 867; 102 S Ct 3440; 73 L Ed 2d 1193 (1982)). Under *Brady* 373 US at 87, suppression of material exculpatory evidence violates a defendant's due process rights, irrespective of the good faith or bad faith of the prosecution.

However, where the government fails to preserve evidence whose exculpatory value is indeterminate and only "potentially useful" to defendant, we apply a different test. *Arizona v Youngblood*, 488 US 51, 57-58; 109 S Ct 333; 102 L Ed 2d 281 (1988). In such a case, the defendant must show: (1) that the government acted in bad faith in failing to preserve the evidence; (2) that the exculpatory value of the evidence was apparent before its destruction; and (3) that the nature of the evidence was such that the defendant would be unable to obtain comparable evidence by other reasonably available means. See *Youngblood*, 488 US at 57-58; *Trombetta*, 467 US at 488-89; *United States v Jobson*, 102 F3d 214, 218 (CA 6, 1996). See also *Illinois v Fisher*, 540 US 544; 124 S Ct 1200; 157 L Ed 2d 1060 (2004) (applying "bad faith" test to destruction of potentially exculpatory evidence after discovery request).

Here, defendant maintains that he requested a copy of the videotape, and the record indicates that he did ask for a copy at the beginning of trial. We agree with the trial court that the fact that the police did not preserve the video tape was "troubling."

Nevertheless, defendant has failed to show that the original videotape of his arrest was exculpatory or that the police acted in bad faith when they erased the tape. See *People v Hunter*, 201 Mich App 671, 677; 506 NW2d 611 (1993); *People v Johnson*, 197 Mich App 362, 365; 494 NW2d 873 (1992). The testimony established that the tape had been erased, in accordance with standard procedure. Defendant acknowledged that he was driving with a suspended driver's license and that he drove away after his initial contact with Officer Rifenberg. The trial court stated that even if the videotape showed exactly what defendant had testified to, it would not have changed the trial court's interpretation of his [defendant's] fleeing of the police officer. Under these circumstances, defendant has failed to show that the police wrongfully destroyed exculpatory evidence to prevent its use at trial. Accordingly, the trial court did not abuse its discretion in denying defendant's motion to dismiss. *People v Adams*, 232 Mich App 128, 132; 591 NW2d 44 (1998).

Affirmed.

/s/ Donald S. Owens
/s/ Jane E. Markey
/s/ Patrick M. Meter