

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TREMAYNE SMITH,

Defendant-Appellant.

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UNPUBLISHED

November 19, 2020

No. 349736

Wayne Circuit Court

LC No. 18-009455-01-FH

Before: O’BRIEN, P.J., AND BECKERING AND CAMERON, JJ.

PER CURIAM.

Defendant, Tremayne Smith, appeals his jury trial conviction for one count of assaulting, resisting, or obstructing a police officer, MCL 750.81d(1). Smith was sentenced to 12 months’ probation. We affirm.

I. BACKGROUND

On November 2, 2018, Detroit Police Officers Wade Natho and Kyle Arella were on patrol in a single police cruiser when Officer Natho observed that Smith’s vehicle “appeared to be driving at a high rate of speed.” Officer Natho “paced” Smith’s vehicle and measured its speed by looking at his own speedometer. Officer Natho determined that Smith was speeding. As Officer Natho followed Smith’s vehicle in order to effectuate a traffic stop, Smith began to pull into the driveway of a home. Officer Natho activated the police cruiser’s lights before Smith’s vehicle came to a complete stop.

Officer Natho and Officer Arella exited the police cruiser, and Smith exited his vehicle despite instructions from Officer Natho to remain inside the vehicle. When asked for his driver’s license, insurance, and vehicle registration, Smith did not provide them and later indicated that his identification was in the home. Smith denied that he had been speeding and began to enter the home. The officers ordered Smith to remain outside. When Smith did not comply, Officer Natho and Officer Arella attempted to detain him. However, Smith was able to push his way into the home.

Officer Natho called for additional police officers because of the issues with “detaining” Smith. Officer Natho then conducted a search using a police database and determined that Smith did not have a valid driver’s license and that multiple warrants had been issued for Smith’s arrest. A short time after additional police officers arrived, Smith voluntarily exited his home and attempted to get in his vehicle. Smith was instructed not to enter the vehicle and to instead put his hands on the vehicle. Smith did not comply, and he struggled when several officers attempted to arrest him. Ultimately, Smith was pepper-sprayed and placed under arrest.

Smith was charged with assaulting, resisting, or obstructing a police officer. At trial, Officer Natho and Officer Arella testified, and dash camera footage and body camera footage were admitted into evidence. Smith’s defense at trial was that the officers lacked a reasonable, articulable suspicion that he had committed a traffic violation and that the stop was pretextual. The jury convicted Smith as charged. Smith was sentenced to 12 months’ probation. This appeal followed.

## II. ANALYSIS

Smith argues that the prosecutor did not present sufficient evidence to support his conviction because the prosecutor failed to establish that the police officers’ actions were lawful. We disagree.

We review de novo a challenge to the sufficiency of the evidence. *People v Bailey*, 310 Mich App 703, 713; 873 NW2d 855 (2015). When ascertaining whether sufficient evidence was presented at trial to support a conviction, “this Court reviews the evidence in a light most favorable to the prosecutor to determine whether any trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt.” *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012) (quotation marks and citation omitted). “Conflicting evidence and disputed facts are to be resolved by the trier of fact.” *People v Miller*, 326 Mich App 719, 735; 929 NW2d 821 (2019).

As already stated, Smith was convicted of assaulting, resisting, or obstructing a police officer. In order to convict a defendant of this offense, the prosecutor must establish that “the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered a police officer” and that the defendant either knew or had reason to know that the police officer was performing his or her duties. *People v Corr*, 287 Mich App 499, 503; 788 NW2d 860 (2010). The prosecutor also must prove that the conduct of the officer from which the defendant’s resistance arose was lawful. *People v Moreno*, 491 Mich 38, 51-52; 814 NW2d 624 (2012).<sup>1</sup> See also *People v Quinn*, 305 Mich App 484, 492; 853 NW2d 383 (2014) (“the prosecution must establish that the officers acted lawfully as an actual element of the crime of resisting or obstructing a police officer under MCL 750.81d.”).

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<sup>1</sup> The prosecution argues that *Moreno* was wrongfully decided. However, “[w]e are bound to follow decisions of the Supreme Court unless those decisions have clearly been overruled or superseded.” *People v Robar*, 321 Mich App 106, 117; 910 NW2d 328 (2017). Because *Moreno* has not been overruled and because the language of MCL 750.81d has not changed since *Moreno* was issued, we are bound to follow our Supreme Court’s holding in *Moreno*.

Smith argues that he had the right to resist arrest because there was insufficient evidence presented at trial that he was speeding and, therefore, “the initial stop was illegal”. “The Fourth Amendment of the United States Constitution and its counterpart in the Michigan Constitution guarantee the right of persons to be secure against unreasonable searches and seizures.” *People v Kazmierczak*, 461 Mich 411, 417; 605 NW2d 667 (2000), citing US Const, Am IV; Const 1963, art 1, § 11. Although an officer generally needs a warrant to search and seize, there are several exceptions to the warrant requirement. *People v Barbarich*, 291 Mich App 468, 472; 807 NW2d 56 (2011). One such exception is for an investigative or *Terry*<sup>2</sup> stop. *Id.* at 473. “A routine traffic stop . . . is a relatively brief encounter” that is akin to a *Terry* stop. *Knowles v Iowa*, 525 US 113, 117; 119 S Ct 484; 142 L Ed 2d 492 (1998).

“A traffic stop is justified if the officer has an articulable and reasonable suspicion that a vehicle or one of its occupants is subject to seizure for a violation of law,” including “a violation of a traffic law.” *People v Simmons*, 316 Mich App 322, 326; 894 NW2d 86 (2016) (quotation marks and citations omitted). The test is objective, *People v Champion*, 452 Mich 92, 98; 549 NW2d 849 (1996), and the stop is justified “even if the officer’s subjective intent for stopping the car is based on other factors,” *People v Kavanaugh*, 320 Mich App 293, 299; 907 NW2d 845 (2017). “Reasonable suspicion entails something more than an inchoate or unparticularized suspicion or ‘hunch,’ but less than the level of suspicion required for probable cause.” *Champion*, 452 Mich at 98. “In order to justify an investigative stop, the police must have a particularized suspicion, based on objective observations, that the person stopped has been, is, or is about to engage in some type of criminal activity.” *People v Coscarelli*, 196 Mich App 724, 727; 493 NW2d 525 (1992). Thus, a police officer’s conduct is unlawful if he detains an individual without having the “reasonable, articulable suspicion” necessary to perform the stop. See *Barbarich*, 291 Mich App at 473.

We conclude that a rational trier of fact could find that the police officers possessed a reasonable, articulable suspicion that Smith violated traffic law by speeding.<sup>3</sup> Specifically, Officer Natho testified that he noticed that Smith’s vehicle appeared to be traveling in excess of the posted speed limit. Officer Natho paced Smith’s vehicle for approximately three blocks and determined that Smith was traveling 32 miles per hour in an area with a posted speed limit of 25 miles per hour. The dash camera footage admitted at trial showed the police cruiser traveling up to 42 miles per hour, and catching up to Smith’s vehicle only after Smith stopped at a stop sign. Officer Natho testified that he decided to effectuate the traffic stop because Smith was speeding. Accordingly, taking the evidence in a light most favorable to the prosecution, we conclude that a rational trier of fact could find that Officer Natho possessed a reasonable, articulable suspicion that Smith was speeding based upon his initial observation of Smith’s vehicle and upon his act of pacing Smith’s vehicle. Contrary to Smith’s suggestions on appeal, Officer Natho’s subjective intent is irrelevant.

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<sup>2</sup> *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968).

<sup>3</sup> Speeding is a traffic violation. MCL 257.627(16).

See *Kavanaugh*, 320 Mich App at 299. Consequently, we conclude that a rational trier of fact could find that the traffic stop was lawful.<sup>4</sup>

We further conclude that a rational trier of fact could find that the police officers who were present at the scene lawfully arrested Smith. In order to effectuate a lawful arrest, a police officer may obtain an arrest warrant from a magistrate after demonstrating probable cause. *People v Manning*, 243 Mich App 615, 621; 624 NW2d 746 (2000). In order to lawfully arrest a person without a warrant, however, “a police officer must possess information demonstrating probable cause to believe that an offense has occurred and that the defendant committed it.” *People v Cohen*, 294 Mich App 70, 74-75; 816 NW2d 474 (2011) (quotation marks and citation omitted). Probable cause to justify an arrest means that the facts and circumstances within the police officer’s knowledge are sufficient to warrant a prudent person to believe that, based on the circumstances shown, the suspect has committed, is committing, or is about to commit an offense. *Id.* at 75.

In this case, after Officer Natho and Officer Arella stopped behind Smith’s vehicle, Officer Natho asked Smith for his driver’s license. Smith did not provide it and later told Officer Natho that his identification was inside his home. After Officer Natho testified that Smith indicated that he did not have his driver’s license “on him,” Officer Natho agreed that an individual can be arrested for driving without a license.<sup>5</sup> Therefore, the evidence supports that, after Smith admitted that his identification was in the home and therefore was not in his immediate possession while he was operating his vehicle, the officers had information demonstrating probable cause to believe that Smith had violated the law. Based on this evidence, a rational trier of fact could find that the arrest was lawful. See *Cohen*, 294 Mich App at 74-75.

Furthermore, Smith was ultimately arrested after he voluntarily exited his home and attempted to enter his vehicle. By the time this occurred, Officer Natho already had conducted a search for Smith using the police database and had determined that there were multiple warrants out for Smith’s arrest. Officer Natho testified that an individual can be arrested if the individual

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<sup>4</sup> Smith argues that “there was no testimony regarding the accuracy of the speedometer” and that it was “inherently unbelievable that the officer could have determined that Mr. Smith was driving 7 miles over the speed limit given the short period of time he observed” the vehicle. To the extent that Smith argues that the jury simply should not have believed the prosecutor’s version of the events, this Court resolves all conflicts of the evidence in favor of the prosecution when the sufficiency of the evidence is challenged. *People v Harrison*, 283 Mich App 374, 377-378; 768 NW2d 98 (2009). We also do not second-guess jury determinations regarding the weight of the evidence or the credibility of the witnesses. *People v Unger*, 278 Mich App 210, 222; 749 NW2d 272 (2008).

<sup>5</sup> Under MCL 257.311, a licensee is required to have his operator’s license in his “immediate possession at all times when operating a motor vehicle” and must “display the same upon demand of any police officer[.]” A violation of MCL 257.311 is a misdemeanor. MCL 257.901. “A police officer may make an arrest without a warrant if there is probable cause to believe that . . . the defendant committed a misdemeanor in the officer’s presence.” *People v Chapo*, 283 Mich App 360, 366-367; 770 NW2d 68 (2009) (citation omitted).

has outstanding warrants.<sup>6</sup> Officer Natho further testified that he had informed the other officers who were at the scene about Smith's outstanding warrants. Based on this evidence, a rational trier of fact could find that the arrest was lawful. See *id.*

In sum, we conclude that a rational trier of fact could find that the police officers possessed a reasonable, articulable suspicion that Smith had violated traffic law and thereafter acted lawfully when conducting the traffic stop. We further conclude that a rational trier of fact could find that the police officers had probable cause to believe that Smith had outstanding warrants and therefore acted lawfully when arresting Smith. Accordingly, the evidence presented at trial was sufficient to establish beyond a reasonable doubt that Smith committed the crime of assaulting, resisting, or obstructing a police officer.

Affirmed.

/s/ Colleen A. O'Brien  
/s/ Jane M. Beckering  
/s/ Thomas C. Cameron

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<sup>6</sup> A police officer may lawfully arrest a defendant based upon one or more outstanding arrest warrants. *People v Jones*, 260 Mich App 424, 430; 678 NW2d 627 (2004).