

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DAVID ALLAN LUCYNSKI,

Defendant-Appellee.

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UNPUBLISHED

December 17, 2020

No. 353646

Tuscola Circuit Court

LC No. 20-015154-AR

Before: LETICA, P.J., and RIORDAN and CAMERON, JJ.

PER CURIAM.

The People of the State of Michigan appeal by leave granted.<sup>1</sup> Defendant, David Allan Lucynski, was charged with operating a vehicle while intoxicated (“OWI”), third offense, MCL 257.625(9)(c); operating a motor vehicle while license suspended or revoked (“DWLS”), second offense, MCL 257.904(3)(b); and possession or transportation of an open alcoholic container in a vehicle, MCL 257.624a(1). Following a preliminary examination, the district court denied the People’s motion to bind Lucynski over on the OWI charge, dismissed the OWI charge, and held that certain evidence would be suppressed in future proceedings concerning Lucynski’s remaining misdemeanor charges. The People appealed to the circuit court, which denied the People’s interlocutory application for leave to appeal based on its finding that the district court acted within its discretion. We reverse and remand for further proceedings consistent with this opinion.

**I. BACKGROUND**

On January 20, 2020, Tuscola County Sheriff Deputy Ryan Robinson was on duty when he observed “two vehicles stopped in the middle of the roadway, facing opposite directions[.]” Deputy Robinson noted that the vehicles were positioned so that the driver’s side windows were facing each other. According to Deputy Robinson, the vehicles were impeding traffic even though there was no other traffic in the area at that time. As Deputy Robinson approached the vehicles,

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<sup>1</sup> *People v Lucynski*, unpublished order of the Court of Appeals, entered July 14, 2020 (Docket No. 353646).

one of the vehicles traveled westbound and the other vehicle traveled eastbound. Lucynski was driving the vehicle that traveled westbound. Deputy Robinson followed Lucynski for 300 to 400 feet before Lucynski pulled into a driveway. Thereafter, Deputy Robinson parked his police cruiser behind Lucynski's vehicle and exited the cruiser. Lucynski was already out of his vehicle.

Deputy Robinson approached Lucynski, who smelled like marijuana and "intoxicating beverages[.]" Deputy Robinson noted that Lucynski had bloodshot eyes and that his demeanor was "pretty laid back." Lucynski admitted that he had consumed alcohol about 20 minutes before. Lucynski also admitted that he had marijuana in his vehicle and that he did not have a driver's license because it was suspended. Lucynski submitted to field sobriety tests, which supported Deputy Robinson's suspicion that Lucynski was intoxicated. After Lucynski refused to submit to a preliminary breath test, Deputy Robinson placed Lucynski under arrest. Thereafter, Lucynski submitted to a preliminary breath test, which revealed that Lucynski had a blood alcohol content of .035. Later, Lucynski's blood was drawn to test for intoxicants, and the sample reflected the presence of THC.

Lucynski was charged with OWI, third offense; DWLS, second offense; and possession or transportation of an open alcoholic container in a vehicle.<sup>2</sup> The preliminary examination was held on March 4, 2020. In relevant part, the People presented the testimony of Deputy Robinson, and Deputy Robinson's body camera footage was admitted into evidence. At the close of proofs, the People argued that bindover of the OWI charge was appropriate because there was sufficient cause for Deputy Robinson to conduct the traffic stop under MCL 257.676b(1).<sup>3</sup> Lucynski opposed bindover on the OWI charge, arguing that there was "an issue in regards to the actual stop." The district court took the matter under advisement and permitted the parties to file written briefs on the issue of whether Lucynski's Fourth Amendment rights were violated.

In a March 27, 2020 opinion and order, the district court concluded that Deputy Robinson lacked both probable cause and the requisite articulable, reasonable suspicion to conduct a traffic stop. In relevant part, the district court analyzed the plain language of MCL 257.626b(1) and concluded that Deputy Robinson could not have had an articulable, reasonable suspicion that Lucynski was "actually impeding or obstructing actual traffic" because Deputy Robinson testified that "Lucynski's vehicle was not actually impeding or obstructing any actual traffic[.]" Based on the district court's conclusion that the stop was unconstitutional, the district court held that "the evidence obtained after the Traffic stop [w]ould be excluded from evidence" for purposes of the preliminary examination. The district court then found that probable cause did not exist to bind Lucynski over on the OWI charge and dismissed it. The district court indicated that it would set the remaining misdemeanor counts for trial. In doing so, the district court held that "the evidence found as a result of th[e] stop is not admissible in any subsequent hearing o[r] trial on those two misdemeanor counts."

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<sup>2</sup> A search of Lucynski's vehicle revealed marijuana and a plastic cup of beer.

<sup>3</sup> Although not argued by the People, it appears that a traffic stop could have been initiated based on Lucynski's violation of MCL 257.672.

The People appealed to the circuit court. In a May 6, 2020 order, the circuit court denied the People's interlocutory application for leave to appeal, holding that "the district court was within its discretion to dismiss Count 1 of the complaint after [the] preliminary examination." The People then appealed to this Court, and the interlocutory application was granted.

## II. STANDARDS OF REVIEW

"We review issues of constitutional law de novo." *People v Benton*, 294 Mich App 191, 203; 817 NW2d 599 (2011). "When reviewing a district court's bindover decision, we review the court's determination regarding the sufficiency of the evidence for an abuse of discretion, but we review the court's ruling concerning questions of law de novo." *People v Flick*, 487 Mich 1, 9; 790 NW2d 295 (2010). We also review a trial 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 occurs when the court chooses an outcome that falls outside the range of reasonable and principled outcomes." *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008). A trial court "necessarily abuses its discretion when it makes an error of law." *People v Feeley*, 499 Mich 429, 434; 885 NW2d 223 (2016) (quotation marks and citation omitted).

## III. ANALYSIS

### A. DISTRICT COURT PROCEEDINGS

The People argue that the district court erred by refusing to bind Lucynski over on the OWI charge and by dismissing the OWI charge. The People also challenge the district court's decision to suppress evidence in future proceedings concerning the DWLS and open intoxicant charges. We agree, but for reasons that are different from those advanced by the People on appeal.

"The purpose of a preliminary examination is to determine whether probable cause exists to believe that a crime was committed and that the defendant committed it." *People v Bennett*, 290 Mich App 465, 480; 802 NW2d 627 (2010) (quotation marks and citation omitted). "Probable cause is established if a person of ordinary caution and prudence [could] conscientiously entertain a reasonable belief of the defendant's guilt." *Id.* (quotation marks and citation omitted). At the preliminary-examination stage, the prosecutor is not required to "prove each element beyond a reasonable doubt, but must present some evidence of each element." *People v Henderson*, 282 Mich App 307, 312; 765 NW2d 619 (2009). "If, during the preliminary examination, the court determines that evidence being offered is excludable, it must, on motion or objection, exclude the evidence." MCR 6.110(D)(2). "Generally, evidence obtained in violation of the Fourth Amendment is inadmissible as substantive evidence in criminal proceedings." *People v Kazmierczak*, 461 Mich 411, 418; 605 NW2d 667 (2000).

In this case, the district court excluded the evidence based on its conclusion that a Fourth Amendment violation occurred. "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." *Id.* at 417. A person is seized if, "in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *People v Corr*, 287 Mich App 499, 506-507; 788 NW2d 860 (2010) (quotation

marks and citation omitted). The basic purpose of the Fourth Amendment “is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials.” *Carpenter v United States*, \_\_\_ US \_\_\_, \_\_\_; 138 S Ct 2206, 2213; 201 L Ed 2d 507 (2018) (quotation marks and citation omitted).

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 for a warrantless seizure exists when a police officer possesses “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.

Another exception is an investigatory or *Terry*<sup>4</sup> stop. *Barbarich*, 291 Mich App at 473. Under this doctrine,

a police officer may approach and temporarily detain a person for the purpose of investigating possible criminal behavior even though there is no probable cause to support an arrest. A brief detention does not violate the Fourth Amendment if the officer has a reasonably articulable suspicion that criminal activity is afoot. Whether an officer has a reasonable suspicion to make such an investigatory stop is determined case by case, on the basis of an analysis of the totality of the facts and circumstances. A determination regarding whether a reasonable suspicion exists must be based on commonsense judgments and inferences about human behavior. [*People v Jenkins*, 472 Mich 26, 32; 691 NW2d 759 (2005) (quotation marks and citations omitted).]

However, not all encounters between a police officer and private citizens constitute seizures. *Id.* “When an officer approaches a person and seeks voluntary cooperation through noncoercive questioning, there is no restraint on that person’s liberty, and the person is not seized.” *Id.* at 33. Similarly, a police officer’s decision to follow someone does not by itself amount to intimidating conduct that would cause a reasonable person to believe that he or she was not at liberty to leave. *People v Jackson*, 175 Mich App 562, 563-564; 438 NW2d 84 (1988).

In *People v Sinistaj*, 184 Mich App 191, 196; 457 NW2d 36 (1990), this Court noted examples “which might constitute a seizure, even where the person made no attempt to leave[.]” Specifically, this Court noted the following examples:

[T]he threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of

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<sup>4</sup> *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968).

language or tone of voice indicating that compliance with the officer's request might be compelled. [*Id.* (quotation marks and citation omitted).]

In this case, we conclude that Deputy Robinson's initial interaction with Lucynski did not amount to a seizure implicating the Fourth Amendment. Although Deputy Robinson testified that Lucynski impeded traffic, Deputy Robinson did not turn on his lights or signal for Lucynski to pull over. Instead, Deputy Robinson followed Lucynski for 300 to 400 feet. After Lucynski voluntarily pulled into a driveway, Deputy Robinson pulled into the driveway behind him. The body camera footage reveals that, after Deputy Robinson pulled into the driveway, Lucynski was standing outside of his parked vehicle and appeared to be approaching a house that was situated at the end of the driveway. When Deputy Robinson asked Lucynski if he lived there, Lucynski responded that a friend lived there. Lucynski then approached Deputy Robinson and began voluntarily answering Deputy Robinson's questions, which included what Lucynski had been doing on the roadway with the driver of the other vehicle and whether the homeowner was home.

After a short period of time, Deputy Robinson asked Lucynski if he had his driver's license on his person, to which Lucynski responded "nope." Deputy Robinson then asked Lucynski if he had a driver's license. Lucynski responded "nope" and eventually admitted that his license was suspended. Deputy Robinson did not indicate that Lucynski was under arrest at that point. Rather, Deputy Robinson asked if Lucynski had "a valid id" on his person, and Lucynski provided his identification to Deputy Robinson. Deputy Robinson then asked Lucynski if he had a "pocket knife or anything like that" on his person. Lucynski denied that he did. Thereafter, Deputy Robinson asked Lucynski if he had marijuana on his person, noting "I smell marijuana." Based on Deputy Robinson's questions, Lucynski admitted that he had marijuana in his vehicle and that he had been drinking "a little bit." Specifically, he admitted to drinking "one can." Deputy Robinson indicated on his radio that he was going to be "out with a subject" and instructed Lucynski to stand in front of Lucynski's vehicle. Deputy Robinson then proceeded to guide Lucynski through a series of field sobriety tests.

We conclude that the earliest that the Fourth Amendment was implicated was when Lucynski admitted that he did not have a driver's license, which is when a reasonable person in Lucynski's position might have concluded that he was not free to leave. However, at that point, Deputy Robinson had probable cause to arrest Lucynski. Instead of immediately arresting Lucynski, however, Deputy Robinson investigated further and asked Lucynski whether he had consumed substances. This was permissible given that Deputy Robinson had noticed that Lucynski had bloodshot eyes, that there was an odor of alcohol and marijuana coming from Lucynski's person, and that Lucynski's demeanor was "pretty laid back." See *People v Rizzo*, 243 Mich App 151, 157-158; 622 NW2d 319 (2000). Deputy Robinson discovered that Lucynski had marijuana in the vehicle that he had been driving and that he had consumed alcohol that day. Based on Lucynski's statements, Deputy Robinson's observations, and Lucynski's performance during the field sobriety tests, Deputy Robinson found probable cause to arrest Lucynski for OWI. Thereafter, Lucynski consented to his blood being drawn, and the results revealed the presence of THC in his system.

In the time preceding the seizure, Lucynski's body language was relaxed, he did not attempt to leave, and he did not demonstrate an unwillingness to answer questions. Rather, Lucynski was entirely cooperative. Although Lucynski was not told that he was "free not to

respond,” this “hardly eliminates the consensual nature of the response[s].” See *Jenkins*, 472 Mich at 33 (quotation marks and citation omitted). There is no indication that Deputy Robinson had weapons displayed and at no point during the initial conversation did Deputy Robinson touch Lucynski’s person. Moreover, Deputy Robinson spoke to Lucynski in a normal, respectful tone of voice. Although Deputy Robinson asked Lucynski a myriad of questions and asked him for his identification, a police officer’s brief and noncoercive questioning, or mere request for identification, does not constitute a seizure. See *id.*

Therefore, the district court erred by analyzing the initial conversation between Deputy Robinson and Lucynski as if the protections of the Fourth Amendment were implicated. Considering the totality of the circumstances, Deputy Robinson had a reasonable suspicion sufficient to warrant transforming the consensual encounter into an investigatory stop and eventually into a lawful arrest. Because the seizures were lawful under the Fourth Amendment, the district court erred by excluding the evidence produced by the investigatory stop and arrest when deciding whether probable cause existed to support the bindover and erred by suppressing the evidence in future hearings concerning the remaining misdemeanor charges.<sup>5</sup>

With respect to whether the district court abused its discretion by denying the People’s motion for bindover on the OWI charge, Lucynski does not argue that probable cause did not exist to support the bindover when considering the improperly excluded evidence. Moreover, upon review of the evidence presented at the preliminary examination, it is clear that probable cause existed to support that Lucynski committed the crime of OWI. Therefore, the district court abused its discretion by refusing to bind Lucynski over for trial and by dismissing the OWI charge. Consequently, we reverse the district court’s March 27, 2020 order.

## B. CIRCUIT COURT PROCEEDINGS

The People argue that the circuit court abused its discretion by denying the interlocutory application for leave to appeal. As already stated, the circuit court held that it was proper to deny the People’s application based on the circuit court’s conclusion that the district court acted within its discretion. Given the above analysis, we agree with the People that the circuit court abused its discretion. See *Feeley*, 499 Mich at 434 (holding that a trial court “necessarily abuses its discretion

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<sup>5</sup> Based on this conclusion, we need not address Lucynski’s argument that MCL 257.676b(1) requires an actual impediment to traffic. However, even if we were to accept Lucynski’s assertion that the statute requires an actual impediment to traffic, we note that this Court has addressed this issue in at least one prior opinion. Specifically, in *People v Salters*, unpublished per curiam opinion of the Court of Appeals, issued January 26, 2001 (Docket No. 215396), p 2, we concluded that the purpose of MCL 257.676b(1) does “not require a showing of an actual impediment to the smooth flow of traffic in order to establish a violation of the statute.” Based on this, the *Salters* Court concluded that a traffic stop was proper, even though “[n]o other traffic was in the area at the time” of the stop. *Id.* Therefore, even under Lucynski’s reading of MCL 257.676b(1), the evidence should not have been suppressed because the traffic stop was based on Deputy Robinson’s reasonable mistake of law or fact. See *Heien v North Carolina*, 574 US 54, 60-68; 135 S Ct 530; 190 L Ed 2d 475 (2014).

when it makes an error of law”) (quotation marks and citation omitted). Therefore, we reverse the circuit court’s May 6, 2020 order.

#### IV. CONCLUSION

In sum, because a Fourth Amendment violation did not occur, we conclude that the district court erred by excluding evidence from the preliminary examination proceeding and by holding that the evidence produced by investigatory stop and arrest would be excluded from future proceedings concerning Lucynski’s DWLS and open intoxicant charges. We further conclude that the district court abused its discretion by denying the People’s motion for bindover on the OWI charge and by dismissing the OWI charge. Therefore, we reverse the district court’s March 27, 2020 order, reverse the circuit court’s May 6, 2020 order, and remand to the district court for reinstatement of the OWI charge and for entry of an order reflecting that the matter is bound over to the circuit court for further proceedings.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Anica Letica

/s/ Michael J. Riordan

/s/ Thomas C. Cameron