

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

UNPUBLISHED
July 26, 2011

v

CRYSTAL DAWN CISCHKE,
Defendant-Appellee.

No. 297702
Oakland Circuit Court
LC No. 2010-230131-FH

Before: TALBOT, P.J., and HOEKSTRA and GLEICHER, JJ.

PER CURIAM.

The prosecutor appeals as of right the trial court's order dismissing a charge of possession with intent to deliver less than 50 grams of heroin, MCL 333.7401(2)(a)(iv), after the court granted defendant's motion to suppress evidence. The trial court determined that the stop of the vehicle that led to defendant's arrest was illegal because the police officer lacked reasonable suspicion to believe that the broken lens of the taillight violated the Motor Vehicle Code, MCL 257.1 *et seq.* We reverse and remand.

Defendant was a passenger in a vehicle that was stopped by the police because of a broken taillight. Photographs of the vehicle depict round taillights and show that a crescent-shaped portion of the red lens is missing from the lower left corner of the left taillight. The trial court determined that the condition of the left taillight did not violate the Motor Vehicle Code because the light itself was still operable and because approximately 90 percent of the red covering remained intact, such that a red light was being emitted.

We review a trial court's ultimate determination on a motion to suppress de novo and its factual findings for clear error. *People v Mullen*, 282 Mich App 14, 21; 762 NW2d 170 (2008). We review de novo issues of statutory interpretation. *People v Williams*, 236 Mich App 610, 612; 601 NW2d 138 (1999).

MCL 257.698(4) provides, in pertinent part:

A lamp or a part designed to be a reflector, if visible from the front, shall display or reflect a white or amber light; if visible from either side, shall display or reflect an amber or red light; and if visible from the rear, shall display or reflect a red light, except as otherwise provided by law. [Emphasis added.]

White light is “provided by law” for illuminating the license plate and for backup lights. MCL 257.689(c); MCL 257.698(3).

In this case, the trial court made findings of fact that the light worked, that “a very minor part of the lamp [] is emitting a white light,” that approximately “over 90 percent of this lamp is emitting a red light,” and that “well over 90 percent of the cover was red and therefore was emitting a red light.” Although the court believed that the emission of white light was minor, the applicable statutes are clear that the emission of white light from a taillight is not permitted. Accordingly, the police officer was justified in stopping the vehicle for a vehicle violation. Because the stop was legal, the trial court erred in suppressing the evidence and dismissing the case.

The parties also address whether dismissal of the charge renders this appeal moot in accordance with *People v Richmond*, 486 Mich 29; 782 NW2d 187 (2010), reh granted in part 486 Mich 1041 (2010). In that case, after the circuit court suppressed all of the evidence against the defendant, the prosecution moved to dismiss the charges without prejudice and then appealed the decision to suppress to this Court. Our Supreme Court held “that the prosecution’s voluntary dismissal of the charges rendered its appeal moot” *Id.* at 34.

This case is distinguishable from *Richmond*. This case does not involve a voluntary dismissal by the prosecution, nor was the dismissal initiated by the prosecution. Rather, dismissal was requested by defendant as part of the relief for her motion to suppress. Further, it was the trial court that initiated the dismissal. After the court granted defendant’s motion to suppress, it announced its intent to dismiss the case and the prosecution did not object. Under these circumstances, the rationale for the rule in *Richmond* does not apply.

Reversed and remanded for reinstatement of the charge against defendant. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ Joel P. Hoekstra
/s/ Elizabeth L. Gleicher