STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED September 27, 2011
v	No. 298506 Monroe Circuit Court
WILLIE D. MONGO, Defendant-Appellee.	LC No. 10-038095-FH

Before: RONAYNE KRAUSE, P.J., and CAVANAGH and JANSEN, JJ.

PER CURIAM.

The prosecution appeals by delayed leave granted from the trial court's order granting defendant's motion to suppress and dismissing the case. We reverse and remand.

Defendants[1] were in a rental vehicle, a Dodge Caravan (a family minivan with tinted rear windows), travelling southbound in the center lane of I-75, in a known drug trafficking corridor. Michigan State Police Trooper John Duffy, the only witness, testified that he observed the Caravan traveling too close to the vehicle in front of it, only one car length. The Caravan was not speeding, visibility was clear, and there were no inclement road or weather conditions. Duffy concluded that the Caravan was not maintaining a safe distance and pulled behind the Caravan. Apparently, Duffy was in the process of checking the Caravan's license plate in his car's computer when the Caravan switched lanes; Duffy testified that the Caravan failed to activate its turn indicators until it was halfway into the next lane. Duffy effectuated a traffic stop. Failing to maintain a safe distance is prohibited by MCL 257.643(1), and failing to use turn signals is prohibited by MCL 257.648(1).

When Duffy approached the vehicle, he observed "marijuana shake" (small particles of marijuana usually resulting from rolling a blunt) in the lap of one of the defendants. Duffy

[1] This case is being considered along with *People v Sanders*, Docket No. 298507, which arises out of the same lower court action. The defendants in both cases were the only two individuals in the vehicle, and in these appeals, the relevant facts and issues are identical. For convenience, we simply refer to "defendants" in both of these cases, because there are no issues before this Court to which the distinction between them is relevant.

searched the vehicle and discovered additional marijuana in the passenger compartment and 5,000 pills of MDMA (Ecstasy) in the air filter under the Caravan's hood.

Defendants moved to suppress all evidence as the fruit of an illegal search. The trial court held an evidentiary hearing, after which it concluded that Duffy had probable cause to search the vehicle upon observing the marijuana shake.[2] However, the trial court concluded that Duffy did not have probable cause to effectuate the traffic stop in the first place, so he was not legally in a position to make the observation of the marijuana shake. Accordingly, the trial court granted defendants' motion.

The prosecution argues that the trial court erred when it used the legal standard of probable cause to determine if the initiation of the traffic stop was lawful. We agree,[3] but under the circumstances, the trial court's error is irrelevant. We reverse on a different basis.

Although this Court reviews de novo a trial court's ultimate decision whether to grant a motion to suppress evidence, the trial court's factual findings at the suppression hearing are reviewed for clear error and will not be reversed unless this Court is definitely and firmly convinced that the trial court made a mistake. *People v Davis*, 250 Mich App 357, 362; 649 NW2d 94 (2002). Questions of constitutional law, statutory or court rule interpretation, or other questions of law are reviewed de novo. *City of Plymouth v McIntosh*, ___ Mich App ___, ___; ___ NW2d ___ (Docket No. 297614, Dec 21, 2010,), slip op at 3.

If an objectively lawful and reasonable basis for effectuating a traffic stop actually existed, then any such stop will not be invalidated on the basis of the effectuating officer having an ulterior motive; likewise, a search incident to an arrest will be valid if there had been probable cause to make an arrest, even if no arrest has yet been made. *People v Labelle*, 478 Mich 891, 891-892; 732 NW2d 114 (2007). A traffic stop is valid where a police officer has "an articulable and reasonable suspicion that a vehicle or one of its occupants is subject to seizure for a violation of law," *People v Williams*, 236 Mich App 610, 612; 601 NW2d 138 (1999), or if the officer has probable cause to believe that a traffic violation has occurred or was occurring. *Davis*, 250 Mich App at 363. The officer's action must be justified at its inception, but whether an ongoing stop remains reasonable will depend on "the evolving circumstances with which the officer is faced." *People v Williams*, 472 Mich 308, 314-315; 696 NW2d 636 (2005), cert den 546 US 1031; 126 S Ct 734; 163 L Ed 2d 569 (2005).

Duffy testified that he observed the Caravan violating the "two second rule" for maintaining a safe distance between vehicles, which at the speed the Caravan was travelling (65 to 70 mph) would have been six to seven car lengths. Duffy did not recall travelling along the side of the Caravan or whether he was stationary at any time when he saw the Caravan. He first noticed the Caravan approximately a hundred yards in front of him, while driving in the same direction, and he did not recall what lane he was in. Duffy conceded that the rear windows of the

[2] This issue has not been cross-appealed, and we do not now consider it.

[3] The prosecutor should, however, have raised this issue in the trial court.

Caravan were probably tinted, and his police vehicle was lower than the Caravan. Duffy conceded that he might have difficulty seeing around a large vehicle if he was close to its bumper, but insisted that he could nevertheless determine that the Caravan was driving too close to the vehicle in front of it despite being directly behind the Caravan. Of some interest, Duffy explained that he got within three or four car lengths of the Caravan to read its license plate, which would, by Duffy's own explanation of what constituted a safe distance, itself be a traffic violation pursuant to MCL 257.603(1). Duffy testified that the Caravan was maintaining only one to one and a half car lengths between itself and the vehicle in front of it.

The trial court concluded that it simply could not believe Duffy's testimony that he had any basis for observing the Caravan failing to maintain a safe distance. The trial court noted that Duffy had been extensively questioned on how he came to observe the Caravan allegedly driving too close to the vehicle in front of it, and Duffy was unable to recall; Duffy went on to explain that he was approximately 100 yards away and that the only position he recalled being in was directly behind the Caravan. While the trial court did not explicitly say, in so many words, that it deemed Duffy's testimony incredible, that is the clear import of the trial court's reasoning. Whether the trial court cited the correct standard is irrelevant—the trial court found that Duffy did not persuade the court that he really had any cause to believe that the Caravan was violating MCL 257.643(1).

The trial court is in the best position to evaluate the credibility of witnesses before it. *People v Geno*, 261 Mich App 624, 629; 683 NW2d 687 (2004); MCR 2.613(C). This Court cannot disturb a trial court's factual findings, even if this Court would have reached a different decision, unless definitely and firmly convinced that the trial court made a mistake. In light of the great deference given to the trial courts' credibility assessments, and also in light of the objective bases in the record for the trial court's findings of incredibility, we cannot find that the trial court committed clear error in rejecting Duffy's testimony about failing to maintain a safe distance.

However, the trial court also found a lack of probable cause to effectuate a traffic stop for the *independent* offense of failing to use turn signals. The trial court reasoned that Duffy "had no business getting behind the car in an attempt to pull it over" at the time the Caravan started turning without its signals, so the trial court "would not find that to be probable cause based upon how this all developed." We disagree.

Duffy did suggest in his testimony some possibility that he was distracted with his computer when the Caravan initiated the turn. However, the trial court did not find that Duffy did not observe the Caravan fail to use its signals and therefore did not find that there was insufficient evidence that the Caravan actually did not use its signals. Therefore, the evidence is that the Caravan committed *a* traffic violation, so there was an objectively valid and reasonable basis to effectuate the traffic stop. At the time of the turn-signal violation, Duffy had not yet initiated a traffic stop, so the point at which the stop needed to be justified had not yet occurred.

Even if Duffy impliedly was himself illegally failing to maintain a safe distance, a police officer has as much of a right to get behind another car on the road as any other driver. By analogy, irrespective of whether an officer has a warrant or even so much as a hunch, a police officer may knock on the door of a residence and, if an occupant chooses to open the door,

observe whatever may be plainly seen through the open door. Although Duffy may not have had a legal justification to initiate a traffic stop when he got behind the Caravan, he had not attempted to do so yet, and there was no legal reason why he could not drive behind the Caravan. When Duffy *did* initiate the traffic stop, he did have an objectively justified basis for doing so.

We therefore reverse the trial court's order granting defendants' motion to suppress evidence and dismiss the case, and we remand for further proceedings. We do not retain jurisdiction.

/s/ Amy Ronayne Krause
/s/ Michael J. Cavanagh
/s/ Kathleen Jansen