

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
July 19, 2011

v

WILLIAM DEAN FROST,
Defendant-Appellant.

No. 298702
Wayne Circuit Court
LC No. 10-000006-FH

Before: BORRELLO, P.J., and METER and SHAPIRO, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of felon in possession of a firearm, MCL 750.224f, possession of a loaded firearm in a motor vehicle, MCL 750.227c, and possession of a firearm during the commission of a felony, second offense, MCL 750.227b. He was sentenced to five years' imprisonment for the felony-firearm conviction and to a probationary term of two years for the remaining convictions. He appeals as of right. We affirm.

Police officers stopped defendant's vehicle after they observed him following another vehicle too closely and driving erratically. During the stop, Detroit Police Officer Edward Jackson saw an open container of alcohol in the vehicle. Officer Brandon Pettit escorted defendant from the vehicle. While Officer Jackson was in the process of retrieving the alcohol container, he saw a shotgun wedged between the driver's seat and door. He retrieved the weapon and defendant was arrested.

Defendant's issues on appeal concern the trial court's denial of his pretrial motion to suppress the evidence seized from his vehicle. In the motion, defendant asserted that the police stopped and searched his car without lawful authority. After conducting an evidentiary hearing, the trial court denied defendant's motion to suppress. This Court reviews a trial court's findings of fact at a suppression hearing for clear error and reviews de novo the court's ultimate decision whether to suppress the evidence. *People v Frohriep*, 247 Mich App 692, 702; 637 NW2d 562 (2001).

A police officer may stop a vehicle if the officer has probable cause to believe that a civil infraction has occurred. See *People v Barbarich*, ___ Mich App ___; ___ NW2d ___ (Docket No. 290772, issued February 1, 2011), slip op at 7-8. MCL 257.643(1) prohibits the driver of a motor vehicle from following another vehicle "more closely than is reasonable and prudent," given the driving conditions. A violation of this provision is a civil infraction. MCL 257.643(4).

The officers testified that they observed defendant following another vehicle too closely and driving erratically. The trial court found this testimony credible, and that finding is not clearly erroneous. Because the officers had probable cause to stop defendant after they observed him committing a civil infraction by following another vehicle too closely, the stop was permissible. The trial court did not err in denying defendant's motion on the basis that the stop was illegal.

With respect to the recovery of the gun from defendant's vehicle, "the basic rule [is] that searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Arizona v Gant*, ___ US ___; 129 S Ct 1710, 1716; 173 L Ed 2d 485 (2009) (citation and internal quotation marks omitted). Defendant contends that two exceptions to the warrant requirement, a search incident to an arrest and what he terms the "probable-cause exception," are not applicable. However, the trial court's ruling was not based on either of those exceptions. Instead, the trial court's decision was premised on the plain-view exception to the warrant requirement. A plain-view seizure is one of the recognized exceptions to the warrant requirement. *People v Davis*, 442 Mich 1, 10; 497 NW2d 910 (1993). "The plain view doctrine allows police officers to seize, without a warrant, items in plain view if the officers are lawfully in a position from which they view the item, and if the item's incriminating character is immediately apparent." *People v Wilkens*, 267 Mich App 728, 733; 705 NW2d 728 (2005) (citation and internal quotation marks omitted). This exception justified the officer's retrieval of the gun in this case. Officer Jackson saw the open container of alcohol when he approached defendant's car during the traffic stop. Then, while retrieving the container, he saw the butt of the gun near the driver's seat. Officer Jackson testified that "the ejection port, where you load the rounds inside of the shotgun," was exposed to him. The officer was lawfully in position to view the gun, whose incriminating nature was immediately apparent. See, e.g., MCL 750.227d.¹ The facts as found by the trial court, which are not clearly erroneous, support application of the plain-view exception to the warrant requirement. Therefore, the trial court did not err in denying defendant's motion to suppress the evidence.²

Affirmed.

/s/ Stephen L. Borrello
/s/ Patrick M. Meter
/s/ Douglas B. Shapiro

¹ We note that defendant does not argue on appeal that the incriminating nature of the gun was not immediately apparent.

² Nor, contrary to defendant's argument, were his interview statements the "fruit of a poisonous tree."