

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

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
October 20, 2011

v

RYAN DANIEL ULFIG,  
  
Defendant-Appellant.

No. 299708  
Oakland Circuit Court  
LC No. 2009-228933-FH

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Before: OWENS, P.J., and JANSEN and O'CONNELL, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions of operating a vehicle under the influence of intoxicating liquor, third offense, MCL 257.625(1), (9), and driving with a suspended license, MCL 257.904(1). We affirm.

Just before 1:00 a.m. on May 27, 2009, Officer Bender of the Novi Police Department spotted a silver van crossing an intersection in front of him. Bender had received a bulletin informing him to be on the lookout for suspicious vans because the police had information that vans had been used in several thefts of tires from apartment complexes in the area. Bender turned to follow the van. He testified that he could not read the license plate number on the van because the license plate light was not operating. Bender followed the van as it entered a gated apartment complex and initiated a traffic stop. Bender testified that he stopped the van to investigate the thefts in the area and because the license plate light was not working.

Defendant was the driver of the van. Bender asked for his license and registration, and noticed that defendant's eyes were red and watery. Defendant admitted that his license had been suspended, and that he had consumed a few beers before driving home. Bender arrested defendant after defendant failed several field sobriety tests. A blood test revealed a blood alcohol level of .24, well above the legal limit of .08. MCL 257.625(1)(b).

Defendant moved to suppress all evidenced gathered after Bender pulled him over on the ground that Bender lacked reasonable suspicion to stop defendant, and therefore violated defendant's Fourth Amendment rights. At the evidentiary hearing, Jennifer Kudanian-Judd, the owner of the van defendant was driving, testified that when she picked up the van several days after defendant's arrest, the license plate light was in working order. To her knowledge, there had never been a problem with the light. Defendant also introduced the in-car video from Bender's patrol car. Defendant argued that Kudanian-Judd's testimony and the video showed

that the license plate light was working, and that Bender merely used the allegation that the light was not working as a pretext to stop the van to investigate the thefts. The trial court denied the motion.

The trial court found defendant guilty of operating a vehicle while intoxicated, third offense, and driving with a suspended license.

In *People v Frohriep*, 247 Mich App 692; 637 NW2d 562 (2001), this Court stated:

We review a trial court's findings of fact for clear error, giving deference to the trial court's resolution of factual issues. *People v Farrow*, 461 Mich 202, 208–209; 600 NW2d 634 (1999), quoting *People v Burrell*, 417 Mich 439, 448–449; 339 NW2d 403 (1983). “A finding of fact is clearly erroneous if, after a review of the entire record, an appellate court is left with a definite and firm conviction that a mistake has been made.” *People v Swirles (After Remand)*, 218 Mich App 133, 136; 553 NW2d 357 (1996). We overstep our review function if we substitute our judgment for that of the trial court and make independent findings. *Farrow, supra* at 209; 600 NW2d 634. However, we review de novo the trial court's ultimate decision on a motion to suppress. *People v Williams*, 240 Mich App 316, 319; 614 NW2d 647 (2000). [*Frohriep*, 247 Mich App at 702.]

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . .” US Const, Am IV.<sup>1</sup> The Supreme Court has held that “whenever a police officer accosts an individual and restrains his freedom to walk away he has seized that person.” *Terry v Ohio*, 392 US 1, 16; 88 S Ct 1868; 20 L Ed 2d 889 (1968). An officer may briefly detain a person “if the officer has a ‘reasonably articulable suspicion’ that the person is engaging in criminal activity.” *People v LoCicero*, 453 Mich 496, 501; 556 NW2d 498 (1996). Reasonableness is determined based on all the facts of the case. *Id.* at 501-502. A police officer may stop and detain a driver when the officer witnesses a civil infraction violation. *People v Rizzo*, 243 Mich App 151, 156; 622 NW2d 319 (2000) (defendant stopped for broken taillight).

Defendant argues that Bender had no reasonably articulable suspicion sufficient to pull defendant over because the in-car video proves that the license plate light was working. However, the video does not prove this. A review of the video reveals that it is inconclusive. However, it does not prove that Bender was mistaken. The testimony that the light was working five days later is not helpful, as there is no testimony about who had access to the vehicle in the interim, or whether the light might have been repaired.

Given that the video does not prove the light was on, the trial court was free to find Bender’s testimony that the light was broken was credible. *Frohriep*, 247 Mich App at 702. The trial court did not clearly err by accepting this testimony. Given this factual finding, the legal conclusion is clear; Bender was authorized to stop defendant for defective equipment. *Rizzo*, 243

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<sup>1</sup> Michigan’s constitution contains a similar provision. Const 1963, art 1, § 11.

Mich App at 156; MCL 257.686(2) (requiring that the license plate be illuminated). Defendant does not allege any other errors that would preclude admission of the evidence gained during the traffic stop.

Defendant also alleges that trial counsel was constitutionally ineffective for failing to make proper use of the in-car video to convince the trial court that Bender had no cause to stop the van. We disagree.

In order to establish ineffective assistance of counsel, a defendant must show that his trial counsel's performance was objectively unreasonable and that he was prejudiced by such deficient performance. *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000). A defendant is only prejudiced if he can show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different . . . ." *Id.* at 302-303 (quoting *People v Mitchell*, 454 Mich 145, 167; 560 NW2d 600 (1997)).

Defendant argues that his counsel was deficient for failing to properly present the evidence of the in-car video to convince the trial court that the license plate light was working. However, the in-car video does not prove that the light was working. Defendant also claims that trial counsel should have used the video to more effectively cross-examine Bender. However, trial counsel did argue that the owner of the vehicle testified that the light was working on the same day defendant was arrested, and that Bender sped up to chase the van immediately upon seeing it, when the license plate was completely hidden. Trial counsel's admission that the video is not conclusive regarding the state of the license plate light was entirely proper as it accurately reflects the contents of the video.

Defendant has failed to rebut the presumption that his trial counsel acted effectively. Further, because Bender testified that the license plate was not lit and the video does not contradict his testimony, a different trial strategy would not have had a different result. Defendant has not proved that he was prejudiced by counsel's performance.

Affirmed.

/s/ Donald S. Owens  
/s/ Kathleen Jansen  
/s/ Peter D. O'Connell