

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ERROL LASHONE HINTON,

Defendant-Appellee.

UNPUBLISHED

February 10, 1998

No. 197100

Oakland Circuit Court

LC No. 93-128166 FH

Before: Markey, P.J., and Doctoroff and Smolenski, JJ.

PER CURIAM.

For the second time, the Oakland Prosecutor appeals by right an Oakland Circuit Court order, dismissing this prosecution for carrying a pistol in a motor vehicle without a license, MCL 750.227; MSA 28.424, on search and seizure grounds. In the people's prior appeal of right, Docket No. 173012, this Court, in an unpublished opinion (September 22, 1995), determined that the traffic stop underlying defendant's arrest was based on probable cause to believe that defendant was in violation of two different sections of the Vehicle Code, one relating to tinted windows, MCL 257.709(1)(a); MSA 9.2409(1)(a), and the other relating to the permissible noise level produced by the exhaust system, MCL 257.707a-.707d; MSA 9.2407(1)-(4). This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Suppression of the evidence, namely the handgun found in the glove compartment of defendant's vehicle, was sought based on the interim bond statute, MCL 780.581; MSA 28.872(1). When defendant was stopped, he produced his driver's license and registration, and the police officer soon determined that there was an outstanding warrant for defendant's arrest on a misdemeanor charge of "lack of insurance."¹ On remand, the trial court found that the testimony of the officer at the original suppression hearing was less than credible and that defendant and his brother, who was a passenger, were truthful in claiming that they had proffered sufficient cash to meet the conditions of the reasonable bail required by the statute. The trial court also apparently determined that defendant's stop and arrest and the officer's refusal to allow defendant to post such bond at the scene was racially motivated.

For Fourth Amendment purposes, a traffic stop is valid if the officer involved has probable cause to believe that any traffic violation has occurred. *Whren v United States*, 517 US 806, 116 S Ct 1769; 135 L Ed 2d 89 (1996). The officer's underlying motivations are constitutionally irrelevant. *Id.* If those motivations are racial, the remedy is not for defendant to obtain dismissal of the prosecution. Rather, defendant may seek removal of the case to federal court for trial pursuant to 28 USC §§ 1443 and 1446-1447. No claim has been made of selective prosecution; only the police officer who made the initial arrest allegedly harbors racial animus, and thus dismissal on this basis is not warranted. *Cf. Oakland Prosecutor v 46th District Judge*, 76 Mich App 318, 330-331; 256 NW2d 776 (1977) (the prosecutor has broad discretion as to whom to prosecute unless the decision to prosecute is based upon race, religion, or some other arbitrary classification that violates the Fourteenth Amendment equal protection principles).

Contrary to the view of the circuit court in this case, the arresting officer was under no obligation to accept cash bail on the scene once it was determined that there was an outstanding warrant for defendant's arrest on a misdemeanor charge. The statute merely authorizes the posting of such bail with the direct supervisor of the arresting officer or department; it does not require the officer himself to accept such bail at the scene. *People v Poole*, 199 Mich App 261, 264; 501 NW2d 265 (1993). The statute only prohibits intrusions attendant to incarceration, but processing the arrest by taking a person to the police station falls short of that mark. *Id.* Because defendant was validly subjected to custodial arrest, a search of his person and of the area immediately within his control, including the interior passenger compartment of his vehicle, was proper. *People v Arterberry*, 431 Mich 381, 386; 429 NW2d 574 (1988). Even if the officer should have accepted cash bail at the scene and allowed defendant to leave, the officer would still have had the right to search the passenger compartment of the vehicle for weapons under these circumstances. See *Michigan v Long*, 463 US 1032, 1050-1051; 103 S Ct 3469; 77 L Ed 2d 1201 (1983). The evidence was accordingly not the fruit of any violation of either defendant's Fourth Amendment rights or of any rights defendant might have had under the interim bail statute. The circuit court therefore clearly erred in granting the motion to suppress evidence.

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

/s/ Jane E. Markey

/s/ Martin M. Doctoroff

/s/ Michael R. Smolenski

¹ Although not important given the view taken of the case in this opinion, the Court assumes that this is a reference to § 3202(2) of the Insurance Code, which makes it a misdemeanor not to have a policy of no-fault insurance in force on a vehicle registered in this State or owned and operated in the State for more than thirty days.