

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

CHARLES DALE CAGE,

Defendant-Appellant.

UNPUBLISHED

August 26, 2008

No. 278672

Oakland Circuit Court

LC No. 2006-211673-FH

Before: Cavanagh, P.J., and Jansen and Kelly, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of third-degree fleeing or eluding a police officer, MCL 750.479a(3), and driving with a suspended license, second offense, MCL 257.904. He was sentenced as an habitual offender, fourth offense, MCL 769.12, to a prison term of 2-1/2 to 20 years for the fleeing or eluding conviction, and 178 days for the suspended license conviction, to be served consecutively. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

At approximately 1:45 a.m., Officer Raskin observed defendant's car change lanes without a signal and twice cross the lane markers as it proceeded westbound. Defendant then pulled into the back portion of a driveway until Raskin's vehicle passed by. Raskin turned his vehicle around and observed that defendant's car had left the driveway and was proceeding eastbound. Defendant's car then turned south onto another street and, as Raskin's vehicle caught up to it, the car turned westbound onto a dead-end street. Raskin signaled for defendant to stop and defendant initially complied. When Raskin opened his car door, however, defendant drove through three front yards, back onto the roadway, and toward the dead end. The car stopped at the dead end and defendant fled on foot, running in the direction of Raskin and coming within 10 to 20 feet of him. Raskin lost sight of defendant, but relayed a description to a dispatcher for a "BOL" ("be on the lookout") broadcast to area police agencies.

Officer Racine heard the BOL broadcast, which described a male suspect by race, "stocky build," and clothing (blue jeans and gray T-shirt with writing). At approximately 3:20 a.m., in an area approximately a mile from where the suspect left the car, Racine observed defendant, who was walking quickly and met the suspect's description. Racine asked him to approach and they conversed. Racine ultimately detained defendant, and Raskin identified him.

A search of defendant resulted in the discovery of a key fob and tag listing the vehicle license plate, year, model, and color. The key was recovered from the abandoned car. At the time of the incident, defendant's driver's license had been suspended.

Defendant argues that the trial court erred in denying his motion to suppress evidence because the police officers did not have reasonable suspicion or probable cause to stop him. We disagree. "This Court reviews a trial court's factual findings in a suppression hearing for clear error. But the '[a]pplication of constitutional standards by the trial court is not entitled to the same deference as factual findings.'" *People v Jenkins*, 472 Mich 26, 31; 691 NW2d 759 (2005) (citations omitted). Rather, this Court reviews de novo the trial court's ultimate ruling on a motion to suppress. *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005), cert den sub nom *Williams v Michigan*, 546 US 1031; 126 S Ct 734; 163 L Ed 2d 569 (2005).

Raskin observed defendant failing to use a turn signal when he changed lanes and later drifting across the lane markings on the road. These observations led Raskin to suspect that the driver was intoxicated. When defendant turned the car into a driveway, Raskin suspected that he did so because he recognized that a police car was following him. A traffic stop was permissible because Raskin observed the traffic violations. *People v Kazmierczak*, 461 Mich 411, 420 n 8; 605 NW2d 667 (2000). In addition, defendant's driving gave rise to a reasonable suspicion of ongoing criminal activity, specifically operation of a vehicle while intoxicated. *People v Christie (On Remand)*, 206 Mich App 304, 309; 520 NW2d 647 (1994), lv den 447 Mich 975 (1994).

Racine engaged defendant in conversation based on his appearance matching the BOL broadcast and proximity in time and distance to the incident with Officer Raskin. Racine also explained that it was unusual for people to walk around Bloomfield Township at 3:20 a.m. "When an officer approaches a person and seeks voluntary cooperation through noncoercive questioning, there is no restraint on that person's liberty, and the person is not seized." *Jenkins, supra* at 33. Defendant informed Racine that there were outstanding misdemeanor warrants for him, which Racine confirmed. In addition to the outstanding warrants providing a basis for detention, defendant's appearance and location provided Racine with reasonable suspicion that defendant was the individual who fled from Raskin. Therefore, the trial court did not err in denying defendant's motion to suppress.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly