

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

UNPUBLISHED
June 19, 2012

v

CORNELIUS LEE MEADS,

Defendant-Appellee.

No. 304556
Wayne Circuit Court
LC No. 11-002238-FH

Before: SERVITTO, P.J., and METER and FORT HOOD, JJ.

PER CURIAM.

The prosecution appeals as of right the trial court’s order granting defendant’s motion to dismiss charges of operating while intoxicated, MCL 257.625(1), and possession of marijuana, MCL 333.7403(2)(d). The trial court found that there was no probable cause to initiate the traffic stop leading to defendant’s arrest, suppressed all evidence resulting from the illegal stop, and dismissed the above charges against defendant. Because the officer had a reasonable, articulable suspicion to stop defendant’s vehicle, we reverse the trial court’s order granting defendant’s motion to dismiss and remand for further proceedings.

The prosecution argues that the trial court erred by granting defendant’s motion to dismiss because the traffic stop of defendant’s vehicle was lawful. We agree.

We review a trial court’s findings of fact during a suppression hearing for clear error. *People v Roberts*, 292 Mich App 492, 502; 808 NW2d 290 (2011). A finding of fact is clearly erroneous if, after a review of the entire record, we are left with a definite and firm conviction that a mistake has been made. *Id.* A trial court’s ultimate decision on a motion to suppress is reviewed de novo. *Id.*

The right against unreasonable searches and seizures is guaranteed by both the United States and Michigan Constitutions. US Const, Am IV; Const 1963, art 1, § 11; *People v Corr*, 287 Mich App 499, 506; 788 NW2d 860 (2010). A search and seizure without a warrant is usually unreasonable, unless it falls within one of the various exceptions to the warrant requirement. *People v Slaughter*, 489 Mich 302, 311; 803 NW2d 171 (2011). In *Terry v Ohio*, 392 US 1, 21, 30-31; 88 S Ct 1868; 20 L Ed 29 889 (1968), the United States Supreme Court held that the Fourth Amendment to the United States Constitution permits an officer to make a brief investigative stop without a warrant, commonly called a “Terry stop.” See also *People v Steele*, 292 Mich App 308, 314; 806 NW2d 753 (2011). An investigatory stop allows police to

conduct a brief investigative stop of a motor vehicle based on a reasonable, articulable suspicion that the person in the vehicle is engaged in criminal activity. *Id.* at 314.

In determining the reasonableness of an investigatory stop, the Court must consider whether the facts known to the officer at the time of the stop would warrant an officer of reasonable precaution to suspect criminal activity. *Id.* The determination “must be founded on a particularized suspicion, based on an objective observation of the totality of the circumstances, that the person stopped has been, is, or is about to be involved in criminal wrongdoing.” *People v Chambers*, 195 Mich App 118, 121-122; 489 NW2d 168 (1992). The conclusion is drawn from an officer’s reasonable inferences based on the facts in light of his training and experience. *Steele*, 292 Mich App at 315. Deference should be given to the experience of law enforcement officers. *Id.* Fewer foundational facts are necessary to justify the stop of a moving vehicle than are required for a house, and a stop also requires fewer foundational facts than both a stop and search. *Steele*, 292 Mich App at 315; *People v Christie (On Remand)*, 206 Mich App 304, 308-309; 520 NW2d 647 (1994).

At the preliminary examination, Officer Adam Falk testified to his observations leading to his initiating a stop of defendant’s vehicle. Falk testified that he first observed defendant fishtail after taking off from a red light. Although there was a snowstorm and the roads were snowy, defendant’s vehicle was the only one that spun when leaving the intersection, according to Falk. Falk testified that defendant then failed to use his turn signal while getting into a turn lane, and entered into traffic in front of two cars while completing a “Michigan left.” While turning, defendant fishtailed again. According to Falk, it was snowing and the roads were not visible, though other cars had been driving on the road, creating tracks in the snow where lanes would have been. Defendant, however, drove on the shoulder of the road, far to the right of the tracks where the other cars had driven. Defendant then activated his left turn signal and left it on for a distance without turning, even though there were opportunities to turn. Falk’s testimony established that defendant was driving erratically.

“[E]rratic driving can give rise to a reasonable suspicion of unlawful intoxication so as to justify an investigatory stop by a police officer.” *Christie*, 206 Mich App at 309. In *Christie*, a police officer followed the defendant’s vehicle for one half mile. *Id.* at 306. The vehicle was swerving and driving on the lane markers. *Id.* at 306, 309. The defendant turned on his left turn signal and then traveled past numerous driveways and a side street before turning. *Id.* at 306. The turn signal was on for about two tenths of a mile. *Id.* at 309. The officer testified that he stopped the defendant to investigate his extended use of the turn signal. *Id.* at 306. A panel of this Court held that the facts constituted reasonable suspicion that criminal activity was occurring, i.e., that the defendant may have been intoxicated and opined that the investigatory stop was a minimal intrusion on the defendant’s rights given the possible danger to the public. *Id.* at 309-310.

The facts in *Christie* are analogous to the present case. In both cases, the defendant had his left his turn signal activated for a distance without turning. In *Christie*, the officer observed the defendant swerving in and out of the lanes. *Id.* at 309. Similarly, in this case, defendant was driving to the right of the tire tracks created by other vehicles that marked the lanes of the road. In addition to these overlapping facts, defendant also fishtailed twice, failed to use his turn

signal, and pulled out in front of other vehicles. The facts and circumstances were sufficient to provide Falk with reasonable suspicion that defendant was involved in criminal activity.

Defendant argues, and the trial court held, that because defendant did not commit a specific traffic violation, the traffic stop was illegal. However, that is not the correct standard. Reasonable suspicion does not require a specific traffic violation to be articulated by the police. As stated in *Christie*, erratic driving can give rise to a reasonable suspicion of unlawful intoxication. *Id.* Falk had reasonable, articulable suspicion to stop defendant's vehicle. The trial court thus erred in granting defendant's motion to dismiss.

Reversed and remanded to the trial court. We do not retain jurisdiction.

/s/ Deborah A. Servitto
/s/ Patrick M. Meter
/s/ Karen Fort Hood