

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

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellant,

UNPUBLISHED  
February 1, 2011

V

MICHAEL ANTHONY MILITELLO,  
  
Defendant-Appellee.

No. 295104  
Baraga Circuit Court  
LC No. 2009-001122-FH

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Before: JANSEN, P.J., and OWENS and SHAPIRO, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's orders suppressing evidence and dismissing the case. We reverse and remand for further proceedings. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

**I. FACTS**

According to the evidence elicited at the preliminary examination and suppression hearing, a 13-year veteran State Police trooper was on duty in his patrol car, with windows up and the radio on, when defendant drove a motorcycle past him. The trooper testified that he clearly heard the motorcycle, and described it as loud and making a "low thud." The trooper initiated a traffic stop to investigate whether the motorcycle had a defective exhaust system. He admitted that he had no scientific reason for his suspicion that the exhaust was too loud, but instead relied on his subjective belief.

When asked for identification, proof of insurance, and vehicle registration, defendant produced the latter two, but stated that the motorcycle belonged to a friend, and that defendant had no form of his own identification with him. Defendant did provide a name, though, but running it through the Law Enforcement Information Network turned up a person of obviously greater height and weight than defendant. According to the trooper, defendant explained the discrepancy by saying he had lost a lot of weight recently. The trooper then found documents in defendant's wallet that provided defendant's true name, a check of which revealed that defendant had three outstanding warrants, two for a suspended license and one for absconding from parole. Defendant was placed under arrest, and a search incidental to that arrest turned up controlled substances on defendant's person.

Defendant testified that there was nothing wrong with the motorcycle's exhaust system, and that he had passed the trooper earlier in the day, traveling at the same rate of speed, and was not pulled over. He further opined that the trooper could not have heard the motorcycle with his windows up and his engine running.

The trial court held that, because the trooper did not use any scientific instrumentation to determine the decibel level of the motorcycle before stopping defendant, there was no objective basis for suspecting that the motorcycle was louder than the legal limit, and thus that the trooper did not have a reasonable basis to make the traffic stop. The court accordingly ordered all of the evidence seized in connection with the stop suppressed, then dismissed the case without prejudice.

## II. REASONABLE SUSPICION

We review the trial court's factual findings in connection with a suppression hearing for clear error, and review the legal conclusions de novo. See *People v Daoud*, 462 Mich 621, 629-630; 614 NW2d 152 (2000).

MCL 257.707(1) requires that motor vehicles, including motorcycles, "be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise," and prohibits removing, destroying, or damaging any of the muffler's baffles, along with any use of "a muffler cutout, bypass, or similar device upon a motorcycle or moped on a highway or street." Subsection (3) of that statute requires a "properly operating exhaust system which shall include a tailpipe and resonator on a vehicle where the original design included a tailpipe and resonator." MCL 257.707c in turn sets forth specific noise limits for the various vehicles in various speed zones.

"In order to effectuate a valid traffic stop, a police officer must have an articulable and reasonable suspicion that a vehicle or one of its occupants is subject to seizure for a violation of law. Thus, on reasonable grounds shown, a police officer may stop and inspect a motor vehicle for an equipment violation." *People v Williams*, 236 Mich App 610, 612; 601 NW2d 138 (1999) (footnote and citations omitted). "Reasonable suspicion entails something more than an inchoate or unparticularized suspicion or 'hunch,' but less than the level of suspicion required for probable cause." *People v Champion*, 452 Mich 92, 98; 549 NW2d 849 (1996).

In determining that the instant traffic stop was an unlawful one, the trial court explained as follows:

A motor vehicle emitting excessive noise is a civil infraction violation which would justify a stop. An actual violation of the Motor Vehicle Code need not be proved. All that is required to justify a stop, is that the officer has a particularized and reasonable suspicion that a violation may have occurred.

Here, the arresting officer testified that he stopped the motorcycle being operated by Defendant because he thought, based upon a subjective belief, that the exhaust noise emitting from the vehicle was excessively "loud." No scientific instrumentation was utilized by him for measuring the noise level, nor did the officer testify that he had received any specific training in differentiating

permissible from impermissible noise levels. The fact that the arresting officer testified that he regularly or routinely stops vehicles for what he perceives to be excessive noise is not material. The statute dealing with the matter contains objective standards which were not satisfactorily addressed by the officer during the course of his testimony.<sup>1</sup>

The trial court correctly held that a motor vehicle emitting excessive noise constitutes a civil infraction that would justify a traffic stop. See MCL 257.683(2) and (6). The court likewise correctly recited that an actual violation need not be proved to justify the stop, because all that is required is a particularized and reasonable suspicion of a violation. See *People v Fisher*, 463 Mich 881, 882; 617 NW2d 37 (Corrigan, J., concurring) (“The dispositive question . . . is not whether an actual violation occurred, but whether the officer had a reasonable suspicion that a violation may have occurred.”).

However, the court then went beyond the question of a particularized and reasonable suspicion and held the trooper to an objective and scientific determination of an offending noise level, as if the trooper’s own ears and experience did not bear on the question. The trial court thus erred. The trooper articulated a suspicion that defendant was driving a motorcycle with a defective exhaust system, see MCL 257.707, and sought to investigate that possibility. The trooper was not attempting to ascertain whether any of the specific noise level limits of MCL 257.707c were exceeded. Doing the latter might well call for resort to scientific instrumentation, but the former could well be done on the basis of an officer’s empirical sense, reasonably gathered, that a motorcycle sounded as if its exhaust system were defective or altered.

For these reasons, we reverse the result below and remand this case to the trial court for further proceedings.

Reversed and remanded. We do not retain jurisdiction.

/s/ Kathleen Jansen  
/s/ Donald S. Owens  
/s/ Douglas B. Shapiro

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<sup>1</sup> The court declined an invitation to listen to the subject motorcycle for purposes of deciding the suppression motion, on the ground that the circumstances of the subject traffic stop differed from what would be available to the court for that purpose, and also the court’s disinclination to presume its competence to hear and adjudge a motorcycle’s noise emissions.