

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

GORDON CECIL MOBLEY,

Defendant-Appellee.

UNPUBLISHED

October 16, 2012

No. 307603

Wayne Circuit Court

LC No. 11-007511-FH

Before: OWENS, P.J., and TALBOT and WILDER, JJ.

PER CURIAM.

The People of the State of Michigan appeal as of right from a circuit court order dismissing charges of possession of cocaine¹ and operating a vehicle with an unlawful blood-alcohol content.² The order was entered after the court granted Gordon Cecil Mobley's motion to suppress evidence. The court concluded that the police stop of Mobley's vehicle was unlawful where the police officer observed and stopped Mobley for speeding outside of the officer's jurisdiction. We reverse and remand for reinstatement of the charges.

The relevant facts are undisputed. Southgate Police Officer Jeff Smith was traveling westbound on Pennsylvania Road, which borders the cities of Southgate and Riverview. He observed Mobley's vehicle traveling eastbound on Pennsylvania Road, allegedly in excess of the speed limit. The eastbound portion of Pennsylvania Road is in the city of Riverview. Officer Smith made a U-turn and stopped Mobley's vehicle. According to Officer Smith, Mobley smelled of intoxicants, had slurred speech, was unable to perform field sobriety tests, and refused to take a Preliminary Breath Test. Accordingly, Officer Smith arrested Mobley for operating a motor vehicle while intoxicated ("OWI"). Another officer later found cocaine in Mobley's coat.

Mobley filed a motion to suppress the evidence on the ground that the police stop of his vehicle was unlawful because Officer Smith was acting outside his jurisdiction and the officer's actions did not fall within the relevant statute,³ which prescribes circumstances in which a city

¹ MCL 333.7403(2)(a)(v).

² MCL 257.625(1)(c).

³ MCL 764.2a.

police officer may exercise authority outside the geographical boundaries of the officer's city. The trial court agreed and granted the motion.

The prosecution does not dispute that Officer Smith's stop of Mobley's vehicle was not authorized,⁴ or that Officer Smith otherwise lacked the statutory authority to arrest Mobley. Rather, the prosecution contends that exclusion of the evidence is not an appropriate remedy for a statutory violation. We agree. Whether the exclusion of evidence is an appropriate remedy for a violation of MCL 764.2a is a question of law that this Court reviews de novo.⁵

The application of the exclusionary rule depends on the constitutional validity of the officer's actions apart from the statutory violation.⁶ Officer Smith allegedly observed Mobley travelling at a moving radar speed of 59 miles an hour in a 45-mile-an-hour zone. There is no contention that this observation was inadequate to justify the stop for a traffic violation. Further, there is no contention that Officer Smith's observations after the traffic stop failed to provide probable cause for Mobley's arrest for suspicion of OWI. The fact that Officer Smith was acting outside his jurisdiction does not render the stop unconstitutional. The trial court erred by focusing on whether there was statutory authority for the stop, rather than the constitutional validity of Officer Smith's actions. The following observation in *People v Hamilton* supports this position:

That the [stop] here did not violate the Fourth amendment is further evidenced by the fact that if the Legislature had provided that a municipal police officer like [Smith] could exercise police powers in other jurisdictions within the state, such an exercise of legislative authority would have been valid and there could have been no constitutional objection to this [stop]. Thus, the only violation here is the statutory one based on [Smith's] noncompliance with MCL 764.2a.⁷

Because there was no Fourth Amendment violation in this instance, the exclusionary rule does not apply. Therefore, the trial court erred in suppressing the evidence and dismissing the case.

Reversed and remanded for reinstatement of the charges. We do not retain jurisdiction.

/s/ Donald S. Owens

/s/ Michael J. Talbot

/s/ Kurtis T. Wilder

⁴ *Id.*

⁵ *People v Hamilton*, 465 Mich 526, 529-530; 638 NW2d 92 (2002).

⁶ *Id.* at 532-533.

⁷ *Id.* at 533 n 10.