

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DAVID RICHARD DREW,

Defendant-Appellee.

UNPUBLISHED

February 1, 2007

No. 266104

Oakland Circuit Court

LC No. 05-202999-FH

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's order quashing the information and dismissing the case. We reverse and remand. This case is being decided without oral argument in accordance with MCR 7.214(E).

While on duty a little after 2:00 a.m. on March 11, 2005, a police officer observed defendant driving a red Firebird. The officer recognized defendant because he had arrested him in December 2003 for drunk driving. At that time, defendant was driving the same red Firebird. According to the officer, when he saw defendant driving in March 2005, he knew that defendant did not have a valid driver's license because when he arrested defendant in 2003, defendant had refused to submit to a Breathalyzer test and his driver's license was therefore suspended for one year.¹ The officer admitted that he was not 100 percent certain that defendant did not have a driver's license, but maintained that he was 95 percent certain that when he observed defendant driving in March 2005, defendant was driving without a driver's license. According to the officer, several months after he arrested defendant in 2003, he checked defendant's driving record by running a Law Enforcement Information Network (LEIN) check on defendant. He stated that he ran the LEIN check because he never received notice that defendant was appealing the suspension of his driver's license and he was expecting to receive such a notice. The officer learned from the LEIN check that defendant had failed to timely appeal the suspension of his license and that his request for an appeal had been denied. More importantly, during this check, the officer learned that defendant's license had been suspended for a period of one year beginning in spring or early summer of 2004. According to the officer, he therefore was aware

¹ See MCL 257.625a(6)(b)(v) and MCL 257.625c.

that defendant's driver's license would have been suspended until May, June or July of 2005. Although nothing about the way defendant was driving struck the officer as unusual or improper, he nevertheless initiated an investigatory stop of defendant's vehicle based on his knowledge that defendant was driving the vehicle without a driver's license.

Upon stopping defendant's vehicle, the officer informed defendant that he knew who defendant was and that he knew defendant was not supposed to be driving. When the officer asked defendant if he had a valid driver's license, defendant responded that his license was restricted. The officer observed that defendant's eyes were "glassy" and that defendant smelled of intoxicants. According to the officer, he returned to his police car and ran a check of defendant's driver's license status, which confirmed his suspicion that defendant's driver's license was suspended. The officer then returned to defendant's vehicle and asked defendant how much he had had to drink that night. Defendant admitted that he had consumed five drinks between 7:00 p.m. and 1:30 a.m. After administering field sobriety tests to defendant, the officer arrested defendant. Defendant consented to a blood test and stipulated at the preliminary examination that the blood test revealed that defendant's blood alcohol level was .10.

Defendant was charged with operating a motor vehicle while under the influence of a controlled substance, third offense,² MCL 257.625(1)(b) and MCL 257.625(9)(c) or MCL 257.625(11)(c), and operating a motor vehicle on a suspended or revoked license, MCL 257.904(3)(a). The district court bound defendant over for trial. Defendant moved in circuit court to quash the information, arguing that the officer's investigatory stop of defendant's vehicle was unlawful. According to defendant, the officer did not have a reasonable suspicion that defendant was engaged in criminal activity because he did not observe defendant engaging in criminal activity and he did not check the status of defendant's driver's license until after he effectuated the stop of defendant's vehicle. Furthermore, defendant contended that although the officer had conducted a LEIN check, this information was stale and therefore could not be relied upon by the officer as a basis for the investigatory stop. The circuit court observed that although defendant styled his motion as one to quash, he was actually challenging the legal validity of the officer's investigative stop of his vehicle and seeking the suppression of evidence obtained from the stop. Instead of holding a new evidentiary hearing on the issue, the parties stipulated to use the record of the preliminary examination to decide this question. The circuit court agreed that the officer's stop of defendant's vehicle was unlawful, explaining as follows:

The officer was on routine patrol . . . [and] saw a red Firebird in the vicinity. There was nothing unusual about the Firebird However, it appears that the nature of the stop was limited to the officer's knowledge or reliance upon the knowledge that he had previously arrested the defendant approximately two years before

* * *

² The parties stipulated that defendant had two earlier drunk driving convictions.

The Court notes that the defendant was in fact bound over to stand trial for operating under the influence of intoxicating liquor third offense and a suspended or revoked license, which is clear he didn't have a license, but reviewing the transcript, I think that the suspicion, the mere suspicion is invalid. It does not constitute a reasonable suspicion that a crime occurred and if you look at the case law, a stop based on the mere computer check, even if done at that time frame, is insufficient.

. . . Even if the officer believed he didn't have a driver's license, that would be a misdemeanor and as we know an officer needs to view a misdemeanor in order to stop the defendant.

Because it concluded that the officer did not have a reasonable suspicion of criminal activity sufficient to justify the investigatory stop of defendant's vehicle, the circuit court suppressed evidence and dismissed the case against defendant.³

In reviewing a trial court's decision on a motion to suppress evidence, we review the court's factual findings for clear error, but review the legal conclusions de novo. See *People v Abraham*, 234 Mich App 640, 644; 599 NW2d 736 (1999).

The federal and state constitutions guarantee the right to be free from unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11. Evidence obtained in the course of a violation of a suspect's rights under the Fourth Amendment is subject to suppression at trial. *People v Cartwright*, 454 Mich 550, 557-558; 563 NW2d 208 (1997). See also *Mapp v Ohio*, 367 US 643; 81 S Ct 1684; 6 L Ed 2d 1081 (1961) (holding that the Fourth Amendment is applicable to the states by the Due Process Clause of the Fourteenth Amendment). Generally, seizures are reasonable for purposes of the Fourth Amendment only if they are based on probable cause. *People v Lewis*, 251 Mich App 58, 69; 649 NW2d 792 (2002). "A limited exception to the requirement of probable cause exists, however, when the officer has a reasonable, articulable suspicion that the person has committed or is about to commit a crime." *Id.* (internal quotation marks and citations omitted). "Police officers may make a valid investigatory stop if they possess "reasonable suspicion" that crime is afoot. Reasonable suspicion entails something more than an inchoate or unparticularized suspicion or "hunch," but less than the level of suspicion required for probable cause." *Id.*, quoting *People v Champion*, 452 Mich 92, 98-99; 549 NW2d 849 (1996). Where that level of suspicion exists, "[a] brief stop of a suspicious individual, in order to maintain the status quo momentarily while more information is obtained, may be reasonable." *People v Chambers*, 195 Mich App 118, 121; 489 NW2d 168 (1992). Fewer

³We note that in making its ruling, the trial court asserted that a police officer must personally witness a misdemeanor in progress before effecting an investigatory stop. We surmise that the trial court erroneously applied a limitation on an officer's prerogative to arrest without a warrant to the officer's prerogative to conduct an investigatory stop. See MCL 764.15(1)(a) (authorizing a police officer to arrest a suspect for a misdemeanor committed in the officer's presence). But see MCL 764.15(1)(d) (authorizing an officer to arrest a suspect upon "reasonable cause to believe a misdemeanor punishable by imprisonment for more than 92 days . . . has been committed and reasonable cause to believe the person committed it").

foundational facts are necessary to support a finding of reasonableness when moving vehicles are involved than if a house or a home were involved. *People v Whalen*, 390 Mich 672, 682; 213 NW2d 116 (1973). Similarly, a stop of a motor vehicle for investigatory purposes may be based upon fewer facts than those necessary to support a finding of reasonableness where both a stop and a search is conducted by the police. *Id.* In determining whether the totality of the circumstances constitute a reasonable suspicion that supports an investigatory stop, the circumstances must be contemplated as understood and interpreted by law enforcement officers, not legal scholars. *People v McKinley*, 255 Mich App 20, 26-27; 661 NW2d 599 (2003). Common sense and everyday life experiences predominate over uncompromising standards. *Id.* at 27. In analyzing the totality of the circumstances, a police officer may consider the modes or patterns of operation of certain kinds of lawbreakers and make inferences and deductions that might elude an untrained person. *Id.*

The question before us is whether the police officer effectuating the investigatory stop of defendant's vehicle had a reasonable, articulable suspicion that defendant was committing a crime based on the officer's personal knowledge that defendant was operating a motor vehicle without a driver's license. We conclude that under the facts of this case, when the officer had personal knowledge that defendant was driving without a driver's license and had independently confirmed or verified the accuracy of this personal knowledge before effectuating the stop, the officer had a reasonable, articulable suspicion that defendant was committing the misdemeanor offense of operating a motor vehicle without a driver's license. Therefore, the officer's investigatory stop of defendant's vehicle was reasonable.

In *People v Ward*, 73 Mich App 555; 252 NW2d 514 (1977), this Court upheld a police officer's investigatory stop of the defendant's vehicle under facts nearly identical to the facts in the instant case. In *Ward*, a police officer saw the defendant driving an automobile and suspected that the defendant was driving without a driver's license; however, the officer was unable to take any action because he was responding to another call. *Id.* at 557. At the end of his shift that day, the police officer checked with authorities in Lansing who confirmed that the defendant's license was suspended. *Id.* at 557-558. A little more than a week later, the officer again observed the defendant driving an automobile on a public street. *Id.* at 558. Except for the fact that he was operating the automobile without a license, the defendant was operating the vehicle in a lawful manner. *Id.* Because he believed that the defendant's license was suspended, the officer stopped the defendant's vehicle. *Id.* This Court upheld the investigatory stop of the defendant's automobile, stating that "[t]he officer in this case had information which understandably led him to conclude that a misdemeanor was being committed in his presence." *Id.* at 559.

The officer's investigatory stop of defendant's vehicle in this case is similarly reasonable and justified. The offense of operating a motor vehicle with a suspended license is a misdemeanor. MCL 257.904(3). The officer's knowledge that defendant was driving without a license "was certainly sufficient to support an investigatory stop." *Ward, supra* at 561. In this case, the officer himself had arrested defendant in 2003 for driving drunk. The officer had personal knowledge that defendant had refused to submit to a Breathalyzer at that time and that defendant's license had therefore been automatically suspended. Furthermore, several months after he arrested defendant in 2003, the officer checked the status of defendant's license, thus confirming that defendant's license was suspended and would continue to be suspended until

May, June or July of 2005. Because the officer's second arrest of defendant was in March 2005, this was well within the time frame within which the officer knew defendant's license would be suspended. Moreover, the officer confirmed that defendant's license remained suspended in March 2005 by running a check after he stopped defendant's vehicle. Based on these facts, we conclude that the officer who effectuated the investigatory stop of defendant's vehicle had more than a mere suspicion of criminal activity; rather, he had an articulable suspicion, based on his personal knowledge regarding defendant's lack of a driver's license, which he had confirmed was true, that defendant was operating his vehicle without a license in violation of MCL 257.904(3)(a).

Defendant asserts on appeal that his license suspension resulting from his refusal in December 2003 to submit to a Breathalyzer in fact expired two months before his March 2005 arrest and that the officer's information regarding the existence of defendant's driver's license was therefore stale. Defendant asserts that his driving record is attached to his appellate brief and indicates that his suspension ended on January 23, 2005. No such record is attached to defendant's appellate brief, however. In fact, defendant provides no authority for his claim, and there is no indication in the lower court record that there was any evidence to this effect before the trial court. The only evidence regarding whether defendant possessed a driver's license when the officer conducted the investigatory stop on defendant's vehicle in March 2005 was the officer's testimony that he conducted a check of defendant's record after he stopped defendant, and this check confirmed his suspicion that defendant was driving without a valid driver's license. We further note that, despite his arguments regarding the status of his driver's license suspension based on his refusal to submit to a Breathalyzer, defendant carefully avoids asserting that he in fact had a valid license in operation at the time in question, stating only that he was eligible to get his license back in January 2005 or that his license suspension ended in January 2005.

We reject defendant's suggestion that the officer's information was stale in this case. This Court recognized in *Ward* that "[t]here will always be some delay between the official action suspending or reinstating a license and the time when that information is conveyed to the law enforcement agencies. If the potential time lag is short enough, we treat the information as 'knowledge.'" *Ward, supra* at 560. In this case, the exact length of the passage of time between the time the officer conducted the LEIN check in which he learned that defendant's license had been suspended and the second time the officer arrested defendant for drunk driving is not known, but it is probably eight to ten months. Although such a delay might certainly render information stale in some, if not most, cases, it does not do so under the facts of this case. As observed above, the officer himself checked the status of defendant's driver's license a few months after he arrested defendant in 2003, and when he did this, he learned that defendant's license was suspended and would continue to be suspended until May, June or July of 2005. The officer's second arrest of defendant in March 2005 was well within the time frame within which the officer knew that defendant's license would be suspended. The officer's information was therefore not stale.

In sum, we hold that the officer's investigatory stop of defendant's vehicle was based on a reasonable suspicion of criminal activity when the officer had personal knowledge that defendant's driver's license was suspended and had confirmed the accuracy of this personal knowledge before stopping defendant's vehicle. However, in making our holding, we wish to

clarify that we are not holding today that a police officer's mere previous contact with a defendant in which the defendant was engaged in criminal activity, without more, is sufficient to justify a subsequent investigatory stop of the defendant's vehicle. The validity of the investigatory stop in this case hinges, not merely on the officer's previous contact with defendant, but on the officer's personal knowledge that defendant was committing a misdemeanor coupled with the fact that the officer had confirmed or verified the fact that defendant's license was suspended before effectuating the stop of defendant's vehicle. We reverse the circuit court's decision to dismiss this case, and remand for further proceedings consistent with this opinion.

Reversed and remanded. We do not retain jurisdiction.

/s/ Stephen L. Borrello

/s/ Kathleen Jansen

/s/ Jessica R. Cooper