

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
December 17, 2015

v

ANDREW JOE III, a/k/a ANDREW JOE,

Defendant-Appellant.

No. 323515
Ogemaw Circuit Court
LC No. 13-004248-FH

Before: SHAPIRO, P.J., and O'CONNELL and WILDER, JJ.

PER CURIAM.

Defendant, Andrew Joe III, appeals as of right his conviction, following a jury trial, of possessing less than 25 grams of cocaine, MCL 333.7403(2)(a)(v). Defendant contends that the trial court erred by refusing to suppress the cocaine evidence. We affirm.

I. FACTUAL BACKGROUND

According to Ogemaw County Sheriff's Deputy Justin Noffsinger, on November 2, 2013, he stopped a vehicle in which defendant was a passenger on I-75 for speeding at about 5:45 p.m. The vehicle was traveling 84 mph in a 70 mph zone. He approached the vehicle. Defendant's brother was driving and defendant was a passenger.

Deputy Noffsinger asked both the driver and defendant basic questions, and defendant responded that they were going to Grayling to meet some friends named Nicole, Dave, and Jamie. Defendant was not sure where he was meeting the friends and did not know their last names. Defendant also stated that they were going to a casino that was 40 miles in the opposite direction. Deputy Noffsinger found the answers suspicious and asked for consent to search the car. Both defendant and his brother consented to the search.

Deputy Noffsinger called for backup. Ogemaw County Sheriff's Deputy Brian Gilbert arrived at 5:53 p.m., and the officers placed defendant and his brother in handcuffs and put them in the back of the police car "for officer safety." Defendant was on the patrol vehicle's passenger side.

While searching the vehicle, Deputy Noffsinger found a razor blade in the center console. He knew from his experience in a narcotics unit that a razor blade can be used to cut cocaine for sale. Deputy Noffsinger contacted Michigan State Police Lieutenant Jeff Keister, the

commanding officer of the STRIKE narcotics investigation team, to ask about the names Nicole, Dave, and Jamie. Lieutenant Keister testified that he informed Deputy Noffsinger that he had conducted narcotics surveillance of an address in Grayling at which people named Nicole, David, and Jamie lived.

After learning the information from Lieutenant Keister, at 6:34 p.m., Deputy Noffsinger called Richfield Township Public Safety Officer Jason Hertzberg. Officer Hertzberg testified that he is a K-9 handler for Richfield Township. According to Officer Hertzberg, his dog alerted to the presence of cocaine on the passenger side of the car. Deputy Noffsinger and Officer Hertzberg did not find any cocaine in the car. The officers questioned defendant, who admitted that he previously had crack cocaine on him but that he had “got rid of it.”

Deputy Noffsinger testified that, at that point, he decided to let defendant and his brother return to their car. As defendant left the police vehicle, Deputy Noffsinger saw cocaine on the passenger floorboard and tucked under the front passenger seat. Deputy Noffsinger arrested defendant.

II. STANDARD OF REVIEW

This Court reviews de novo the trial court’s decision on a motion to suppress and reviews de novo the underlying constitutional issues regarding Fourth Amendment violations. *People v Henry (After Remand)*, 305 Mich App 127, 137; 854 NW2d 114 (2014). We review the trial court’s factual findings for clear error. *Id.* The trial court’s findings are clearly erroneous if, after reviewing the record, we are definitely and firmly convinced that the trial court made a mistake. *People v Antwine*, 293 Mich App 192, 194; 809 NW2d 439 (2011).

III. APPLICATION

Defendant contends that the trial court erred when it refused to suppress the cocaine evidence because it was the product of an illegal seizure under the Fourth Amendment of the United States Constitution. According to defendant, the length of the stop and the officers’ continued questioning of defendant were unreasonable. We disagree.

The United States and the Michigan Constitutions guarantee the right to be secure against unreasonable searches and seizures. *Henry*, 305 Mich App at 137. A traffic stop constitutes a seizure under the Fourth Amendment of the United States Constitution. *People v Williams*, 236 Mich App 610, 612, n 1; 601 NW2d 138 (1999). A stop is valid if the police officer has “an articulable and reasonable suspicion that a vehicle or one of its occupants is subject to seizure for a violation of law.” *Id.* at 612.

During a traffic stop, an officer may ask questions about the violation of law, including questions about the driver’s destination and travel plans. *People v Williams*, 472 Mich 308, 316; 696 NW2d 636 (2005). An officer may also ask follow-up questions if the defendant’s initial answers are suspicious. *Id.* at 316. A defendant may be lawfully detained while police investigate. *People v Chambers*, 195 Mich App 118, 123; 489 NW2d 168 (1992). “[D]etention does not transform an investigatory stop into an arrest as a matter of law.” *Id.* However, a detention may become too long to be reasonable. *Id.* To determine whether a detention is too long, courts consider “whether the police were diligently pursuing a means of investigation that

was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain those stopped.” *Id.*

In this case, Deputy Noffsinger permissibly stopped the car in which defendant was a passenger for violating the law by traveling above the speed limit. Deputy Noffsinger permissibly asked questions about the occupants’ destination and travel plans. When the answers he received were suspicious, Deputy Noffsinger asked follow-up questions. At that point, defendant consented to a search of the car.

Deputy Noffsinger was diligent in pursuing his investigation. He immediately called for backup. When backup arrived, the officers permissibly detained defendant and his brother in the police vehicle. While searching the car, the officers found an item commonly used in the delivery of cocaine. At that point, Deputy Noffsinger was “justified in extending the detention long enough to resolve the suspicion raised.” See *Williams*, 472 Mich at 315. Less than 50 minutes after Deputy Gilbert arrived to assist Deputy Noffsinger with the search, he called Officer Hertzberg for K-9 assistance.

In response to the dog’s alert to the presence of cocaine on the passenger side of the vehicle, the officers questioned defendant further. Defendant indicated that he had possessed cocaine but had disposed of it. At that point, having found no evidence of any crime, the officers decided to end the stop. Deputy Noffsinger then found cocaine in the police car where defendant had been sitting.

We are not definitely and firmly convinced that the trial court made a mistake when it found that the officers’ actions and the length of the detention were reasonable. There is no indication that Deputy Noffsinger failed to diligently pursue his investigation. To the contrary, this case presents an evolving fact pattern of suspicion and investigation. Deputy Noffsinger responded to each new suspicion promptly. We conclude that the seizure continued to be valid throughout the course of the investigation.

Defendant also contends that the cocaine was the product of an illegal search. There is no indication in the record that the officers discovered the cocaine after a search. Rather, the cocaine was in plain view inside the police car. See *People v Gonzalez*, 256 Mich App 212, 232; 663 NW2d 499 (2003). We conclude that no illegal search took place in this case.

We affirm.

/s/ Peter D. O’Connell

/s/ Kurtis T. Wilder

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SHAPIRO, P.J. (*concurring*)

I concur in the result only.

/s/ Douglas B. Shapiro