STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JOSEPH COLLINS,

Defendant-Appellee.

UNPUBLISHED
November 24, 2020

No. 349990
Wayne Circuit Court
LC No. 19-002237-01-FH

Before: LETICA, P.J., and FORT HOOD and GLEICHER, JJ.

PER CURIAM.

The police stopped defendant Joseph Collins's vehicle when their scout-car computer reported that his vehicle was uninsured. An inventory search yielded a loaded firearm in Collins's bookbag. But the license plate number fed into the computer did not match that of Collins's car. The circuit court determined that the officers had "randomly" run a plate number, characterized the stop as "pretextual," and suppressed evidence of the gun. The prosecutor contends that the circuit court improperly focused on the officers' subjective intent rather than the totality of the circumstances.

The circuit court's determination that the officers had not run Collins's license plate number when they stopped the vehicle is well supported by the evidence. Regardless of the officers' motivations, the court's finding that the officers lacked reasonable suspicion for the stop was not clearly erroneous. Absent evidence that Collins's vehicle was uninsured, the seizure and subsequent search contravened the Fourth Amendment, requiring suppression of the evidence and dismissal of the case. We affirm.

I

Detroit Police Officer Jalen Williams testified that he and his partner, Officer Thomas Jones, were on patrol one evening when they decided to run the license plate number of a beige Grand Marquis. According to "Talon," which Williams described as "our LEIN network," the vehicle had no insurance. Williams initiated a traffic stop. The driver, Joseph Collins, provided his driver's license and registration but could not produce proof of insurance. Williams "decided to tow the vehicle for no insurance" and to issue Collins a ticket. While awaiting the arrival of a

tow truck, Williams performed an inventory search. He opened Collins's "bookbag" and discovered two sandwich bags of marijuana, a loaded firearm, and a holster. The prosecution charged Collins with carrying a concealed weapon contrary to MCL 750.227.

Collins challenged the search, contending that the police lacked reasonable suspicion to stop him. The circuit court conducted an evidentiary hearing. At the hearing, Williams admitted that Collins had not committed any traffic offense and that the sole basis for the stop was that according to "Talon," the car had no insurance.

On cross-examination, Collins's counsel questioned Williams closely regarding the license plate number that the officers had actually plugged into the computer system. Williams testified that he could not recall the number; counsel refreshed his recollection with a copy of Williams's own police report. According to the report, the license plate number the officers entered into the Talon system was DMW 9706. Counsel inquired whether that number "was based upon what you observed on that vehicle," and Williams responded, "Yes." The relevant questioning continued as follows:

> *Q.* When you gave him a ticket for the traffic violations . . . you put the vehicle . . . license plate number that you ran on that ticket as well, correct?
>
> *A.* Yes.
>
> *Q.* Okay.
>
> Now this Talon System. When you put a license plate number in the Talon System what comes up?
>
> *A.* The vehicle, the registered owner. The year of the vehicle, the VIN and the license plate.
>
> *Q.* And that came up in this case?
>
> *A.* Yes.
>
> *Q.* Are you sure Officer?
>
> *A.* That's every, that what . . . happens when you run a vehicle through the Talon.
>
> *Q.* Okay.
>
> So when you put in DMW9706 Mr. Collins name and that vehicle came up?
>
> *A.* I can't recall so. I was driving the vehicle.

Williams clarified that his partner, Officer Jones, had put the license plate number into the Talon system based on information Williams had conveyed. Williams repeated, twice, that he

could not recall whether Collins's "information" came up when the license plate number was put into the system.

On redirect examination, the prosecutor asked whether Williams saw "the defendant's name come up" when the license number was put into the system. Williams contradicted his direct exam testimony and answered affirmatively. On recross examination, defense counsel reinforced that the number that the officers had placed into the computer was "the plate number that you have provided this Court[.]" Williams agreed. Further questioning by both counsel and the circuit court revealed that an entirely different license plate number—DXN 1953—had been written on an "interrogation report" filled out after Collins had been brought to the police station. The number was recorded elsewhere as DXN 1756. On questioning from the court and relying on his police report, Williams testified that DXN 1756 was not the license plate number of the vehicle that he pulled over.

Collins testified that the license plate number on the vehicle he was driving that night was not the one recorded on the reports, but DXN 1753.[1] He denied having ever owned a vehicle with the license number recorded by Officer Williams on the police report. The receipt from the towing company confirmed this testimony, as did the car's registration. Collins denied that he owned any vehicle bearing license plate number DMW 9706, as recorded in the police report. Notably, the ticket Collins received at the scene (which he produced at the evidentiary hearing) reflected a license plate number of DMW 7406, which also did not belong to Collins.

Collins's lawyer argued that the officers had not run the correct license plate number through their LEIN system, and therefore had no legal basis to conduct a traffic stop. The prosecutor countered that the officer testified that he saw Collins's name come up on the screen, and that the license plate numbers recorded in the reports must have been "typo[s]."

The circuit court disbelieved the officers had run Collins's license plate number through the Talon system, ruling that the stop had been without reasonable suspicion and therefore was pretextual:

> The Court finds that the officer driving in the evening, sees the defendant's vehicle. The defendant is not swerving. The defendant doesn't have a broken light. The defendant didn't run a stop sign or red light.
>
> There's nothing about this particular vehicle that would warrant a traffic stop. He have [sic] not violated a traffic offense in the presence and viewing of the police officer. This falls within the pretextual stop conducted by a police officer.
>
> That he randomly runs a driver[']s [sic] license for whatever reason. We don't know that this particular officer has some type [of] prejudice, bias toward a

[1] The transcript reflects that Collins stated that the license plate number was "DXN 1752," but in light of Collins's subsequent proofs it is certainly possible that the transcriptionist inadvertently mis-recorded (or Collins mis-stated) the last digit.

particular type of car. Or color car. But he runs this license plate in Talon and determines that he does not have insurance.

That offense is not an offense that occurs in the presences or the eyes of a police officer. You're had [sic] to do something to make that determination. And that's what this officer did.

And based on that pretextual stop he doesn't have insurance. He didn't have any initial reason, probable cause, to stop the vehicle to believe that that vehicle or the person in the vehicle was in the commission of a crime.

That the testimony regarding which driver[']s [sic] license was ran, which driver license plate that was connected to that car was ran. Was it run, was that license plate observed by this witness Officer Williams or his partner? In order to - - it's relevant for this reason.

He can't recall whether or not when the license plate was ran [sic] in Talon Mr. Collins['s] name and information popped up. Because he was giving information to his partner who was putting that license plate into this system. And then he, and then there's the inconsistency regarding which plate was actually on, which license plate was actually on the vehicle.

It's inconsistent on his interrogation report. It's inconsistent on the report, the license number that was given to the 36th District Court. And so the Court doesn't find that testimony very credible.

And it was clearly a stop so that there could be a search of the vehicle. Running someone's plate to determine - - where they've done nothing in your view in your sight. To determine if they had in - - because he specifically said he ran it in Talon to determine if he had insurance that is a pretextual stop the Court finds.

Accordingly, the court deemed the search unconstitutional and suppressed the handgun evidence. Absent that evidence, the prosecution could not prove that Collins carried a concealed weapon without a license. The court therefore dismissed the case. The prosecutor now appeals.

II

The Fourth Amendment commands that before stopping a vehicle and seizing its driver, "the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity." *United States v Cortez*, 449 US 411, 417-418; 101 S Ct 690; 66 L Ed 2d 621 (1981). "The benchmark for satisfaction of Fourth Amendment rights is reasonableness, and reasonableness requires a fact-specific inquiry that is measured by examining the totality of the circumstances." *People v Hyde*, 285 Mich App 428, 436; 775 NW2d 833 (2009). These principles mean that the officers who stopped Collins needed to identify with particularity an objective basis for suspecting that he had committed an offense. The United States Supreme Court summarized in *Cortez*, 449 US at 418:

> [A]n assessment of the whole picture must yield a particularized suspicion[, which] is the concept that the process just described must raise a suspicion that the particular individual being stopped is engaged in wrongdoing. Chief Justice Warren, speaking for the Court in *Terry v Ohio*, [392 US 1, 21 n 18; 88 S Ct 1868; 20 L Ed 2d 889 (1968),] said that, "[t]his demand for specificity in the information upon which police action is predicated is *the central teaching of this Court's Fourth Amendment jurisprudence*."

Whether the officers had legally sufficient "reasonable suspicion" to stop and detain Collins is a mixed question of fact and law. *Ornelas v United States*, 517 US 690, 696; 116 S Ct 1657; 134 L Ed 2d 911 (1996). Essentially, an appellate court must determine whether the facts as found by a trial court add up to a reasonable suspicion of wrongdoing.

Our review of a circuit court's factual findings is for clear error. *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005). This means that we must accept the circuit court's findings of fact unless we determine that they are clearly erroneous. *People v Reese*, 491 Mich 127, 159; 815 NW2d 85 (2012). "This standard is higher than the standard for reviewing questions of law because the finder of fact often must choose between conflicting and contradictory testimony and is in a far better position than is this Court—or the Court of Appeals—to determine [witnesses'] credibility." *Id*. at 159-160 (quotation marks and citations omitted). Our review of the circuit court's application of Fourth Amendment principles is de novo. *People v Hammerlund*, 504 Mich 442, 450-451; 939 NW2d 129 (2019).

The parties agree that the resolution of this case rises or falls on whether the officers reasonably suspected that Collins was driving without insurance, since there was no other reason to pull him over. The circuit court made several different factual findings relevant to this question. In recounting what happened that evening, the court declared that before stopping Collins, an officer "randomly runs a driver[']s license for whatever reason," and highlighted that Collins had otherwise committed no offense warranting the officers' attention. The court found that Williams could not recall whether Collins's name was displayed when the information was put into the Talon system. And on the whole, the court did not find Collins's testimony "very credible." In the court's view, the stop was "pretextual" because "it was clearly a stop so that there could be a search of the vehicle." We interpret the court's remarks as an expression of disbelief that the officers had run Collins's license plate number through the system, and a conclusion that the officers stopped his car for other reasons—none of which amounted to reasonable suspicion that Collins had committed or was about to commit an offense.

In *Whren v United States*, 517 US 806, 813-814; 116 S Ct 1769; 135 L Ed 2d 89 (1996), the Supreme Court held that an officer's subjective motive for effectuating a traffic stop is irrelevant—as long as the officer had probable cause or reasonable suspicion for the stop. If the prosecution demonstrates that the officer had "a particularized and objective basis for suspecting the particular person stopped of criminal activity," *Cortez*, 449 US at 417-418, other reasons for the stop—even improper ones—play no role in the legal analysis. Here, however, the circuit court found that the officers lacked a legitimate basis for stopping Collins's car because the license plate number they put into the LEIN system was unrelated to Collins's license plate number; in the court's words, it was run "randomly." Lest there be any doubt about what the court meant, the court doubled down, explaining that the stop was "pretextual" because given the inconsistencies

in the reported license plate numbers, the officers did not know whether Collins had insurance. The court determined that the objective facts—the license plate numbers written down at the scene on the report and the ticket—simply did not support that the officers had run Collins's plate number through the system. We have no grounds to question that ruling, especially since only two out of the seven characters of Collins's license plate were the same as those recorded by the officers.[2]

Without evidence that the officers checked Collins's license plate number rather than a "random" one, the prosecution cannot establish that the officers had a reasonable suspicion that Collins was driving without insurance. This was not a typo or a mistake in perception, the court concluded. Rather, the circuit court found that there was no true or accurate factual foundation for the stop. Given the plate numbers recorded in the officers' records and their marked variance from Collins's plate number, that finding is not clearly erroneous.

We affirm.

/s/ Anica Letica
/s/ Karen M. Fort Hood
/s/ Elizabeth L. Gleicher

[2] The circuit court did specifically acknowledge that the Fourth Amendment permits an investigative stop based on information gained by running a license plate through a lien system. See *Kansas v Glover*, __ US __; 140 S Ct 1183; 206 L Ed 2d 412 (2020). We take this opportunity to highlight that point. The police may randomly select a car and enter its license plate number into a LEIN system to check the registration or insurance. See *People v Jones*, 260 Mich App 424, 427-428; 678 NW2d 627 (2004) ("A police officer may properly run a computer check of a license plate number in plain view even if no traffic violation is observed and there is no other information to suggest that a crime has been or is being committed. That is, there is no probable cause or articulable suspicion requirement to run a computer check of a license plate number in which there is no expectation of privacy."). See also *United States v Ellison*, 462 F3d 557, 563 (CA 6, 2006) ("[S]o long as the officer had a right to be in a position to observe the defendant's license plate, any such observation and corresponding use of the information on the plate does not violate the Fourth Amendment."). Here, however, the court made a finding rooted in a credibility assessment that the officers had not actually run *Collins*'s license plate number but a "random" plate number utterly unrelated to Collins's actual license plate number. We have no basis to second-guess that finding. And had the officers made a good-faith error in communicating the license plate number to the dispatcher, their mistake would not lead to the exclusion of evidence gained during a subsequent search. See *United States v Leon*, 468 US 897; 104 S Ct 3405; 82 L Ed 2d 677 (1984). The stop was tainted not by the fact that it was based on running a license plate number through Talon, but because even if they had done so, the number they ran bore no reasonable relationship to Collins's actual license plate number.