

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MARCELLA MARIE RAPPETTE,

Defendant-Appellee.

UNPUBLISHED

March 18, 2021

No. 352988

Livingston Circuit Court

LC No. 19-025904-FH

Before: BORRELLO, P.J., and BECKERING and SWARTZLE, JJ.

PER CURIAM.

The prosecution appeals as of right the trial court’s order granting defendant’s motion to suppress evidence discovered during a traffic stop and dismissing the charge of operating a motor vehicle while intoxicated, third offense (OWI-III), MCL 257.625(1); MCL 257.625(9)(c). For the reasons set forth in this opinion, we reverse and remand for further proceedings consistent with this opinion.

I. BACKGROUND

After being charged with OWI-III, defendant moved the trial court to suppress evidence and ultimately dismiss the charge based on defendant’s assertions that the evidence emanated from an unlawful traffic stop.

The incident at issue occurred during the early morning hours of September 22, 2019. Daniel Frenger, a police officer with the Green Oak Township Police Department, was parked in his patrol car at approximately 3:30 a.m. that morning and watching for speeding vehicles. According to Frenger, it was a “clear night” with dry road conditions. Frenger testified at the evidentiary hearing that as he was sitting in his vehicle, a black Dodge Ram 1500 pickup truck drove by his patrol car, followed shortly afterward by a small SUV. Frenger was facing west and the Ram was traveling west. As it passed, Frenger noticed that the Ram “did not have a license plate on the back.” The Ram also had a tinted back window.

Frenger drove onto the road to catch up to the Ram. Frenger drove behind the two vehicles and “observed them for a short period of time.” He was focused on the Ram pickup truck and saw

it “cross over the center line being into the center turn lane about a tire width, one time.” Frenger testified that the pickup truck went into the center turn lane “[o]nly a short period of time, enough to go across and come right back.” There was no turn signal initiated, and the truck did not appear to be turning left. Frenger was able to see around the SUV, which was a relatively narrower vehicle and was driving inside its lane, to observe the Ram cross into the center lane.

Frenger passed the small SUV by using the right lane¹ and got behind the Ram pickup truck. The truck entered the center turn lane and turned left, at which point Frenger activated his patrol lights. The pickup truck continued traveling south after completing the left turn, and Frenger activated his siren and spot light to get the driver’s attention. At this point, Frenger saw a piece of paper in the back window of the Ram, but he was unable to read what was on the paper. The Ram stopped after pulling into the driveway of a residence approximately a tenth of a mile from the intersection where the Ram had turned left. Defense counsel stipulated at the evidentiary hearing that defendant was the driver of the Ram. At some point, Frenger learned that the residence belonged to defendant. After she stopped the truck, defendant opened the door and Frenger ordered her to remain in the vehicle. Frenger explained his reasons for ordering defendant to stay in the vehicle as follows:

For officer safety purposes. I don’t know what she’s going to do, if she’s going to try and run in the house, if she’s going to hop out and point anything at me. It’s uh, officer safety.

Frenger approached defendant’s vehicle. He did not remember if he stopped to look at the piece of paper in the back window, but he assumed that the piece of paper was a temporary license plate. Frenger testified that he was never able to read the temporary license plate and that its contents were not clearly visible to him. According to Frenger, his focus was on defendant as the driver. He also noted that defendant “didn’t stop for me very quick.”

The patrol video was admitted into evidence at the evidentiary hearing and played for the court. The patrol video began when defendant turned left and Frenger activated the overhead lights. Frenger testified the 30 seconds preceding the activation of the lights is typically recorded as well. However, for some unknown reason, the patrol video in this case did not capture the 30 seconds before Frenger activated his lights. Frenger admitted that the piece of paper in the rear window of the Ram was visible in the patrol video and that the patrol video showed defendant making a proper left turn.

Frenger testified that he stopped defendant’s truck because of the absence of a license plate and his observation of the truck going over the center turn lane line by a tire width. Frenger further indicated that based on his training and experience, crossing over the line of the center turn lane at 3:30 a.m. was “an indicator of a possible intoxicated driver.” Frenger testified that he had received relevant training in the police academy, that he had been a police officer for approximately three and a half years, and that addressed operating-while-intoxicated situations on multiple occasions.

¹ The road had five lanes: two lanes for each direction of traffic with a center turn lane in between.

In support of her motion to suppress and dismiss, defendant argued that the traffic stop was unlawful because defendant had a visible paper temporary license plate properly placed in her rear window and the patrol video did not show that defendant crossed the center line.

The prosecutor argued that Frenger had observed possible civil infractions to justify the traffic stop, in the form of a license plate violation and improper lane use. The prosecutor particularly argued that the temporary license plate was not clearly visible and readable. Further, the prosecutor argued that the traffic stop was justified because Frenger had a reasonable and articulable suspicion based on his training and experience that defendant was intoxicated, and defendant failed to stop in response to Frenger's overhead lights for approximately a tenth of a mile such that there was a potential fleeing and eluding offense.

The trial court granted defendant's motion to suppress evidence and dismissed the case on the ground that there was no lawful basis for the traffic stop. The trial court found that the patrol video showed that the temporary plate was in a visible location and that Frenger also testified that he could eventually see the temporary plate in the rear window. The court reasoned that once Frenger recognized that there was a temporary plate, "that was all that was necessary" and there was no reason to continue with the stop. The trial court also found that "the reasons for the stop . . . it doesn't exist here and the driving that I saw would not give . . .—in Michigan on that stretch of Grand River going over one, one time uh, one tire width into the, into the turn lane doesn't, doesn't prove to me to be anything to give cause to a stop" The trial court noted that there was no other testimony about the truck failing to stay in its lane at any other point during the incident. Further, the trial court ruled that defendant did not wait an inordinate time to stop her vehicle.

Following the trial court's dismissal of the case, the prosecutor appealed.

II. ANALYSIS

The prosecution argues that the trial court erred by granting defendant's motion to suppress the evidence and dismissing the case because Frenger had a reasonable suspicion that traffic laws were being violated, which permitted him to lawfully conduct a traffic stop of defendant's vehicle.

"In considering a trial court's ruling on a motion to suppress, we review its factual findings for clear error and its interpretation of the law de novo." *People v Dunbar*, 499 Mich 60, 66; 879 NW2d 229 (2016). Under the clear error standard of review, a trial court's factual findings "will be affirmed unless we are left with a definite and firm conviction that a mistake was made." *People v Simmons*, 316 Mich App 322, 325; 894 NW2d 86 (2016) (quotation marks and citation omitted).

"Both the United States and Michigan Constitutions protect against unreasonable searches and seizures." *Id.*, citing US Const, Am IV; Const 1963, art 1, § 11. In the context of traffic stops, "we apply the standard set forth in *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968)," under which "the reasonableness of a search or seizure depends on 'whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place.'" *People v Williams*, 472 Mich 308, 314; 696 NW2d 636 (2005), quoting *Terry*, 392 US at 20. "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." *People v Williams*, 236 Mich App 610, 612; 601 NW2d

138 (1999). “Whether a reasonable suspicion justifies a traffic stop depends on a commonsense view of the totality of the circumstances.” *People v Campbell*, 329 Mich App 185, 196; 942 NW2d 51 (2019). “An officer’s conclusion must be drawn from reasonable inferences based on the facts in light of his training and experience.” *Id.* (quotation marks and citation omitted). A police officer may stop and temporarily detain a person based on witnessing a violation of the Michigan Vehicle Code that is a civil infraction. *Dunbar*, 499 Mich at 66, citing MCL 257.742(1).

In this case, Frenger testified that he conducted a traffic stop of defendant’s vehicle because he did not know if defendant had a license plate and because defendant crossed the center line. Frenger further testified that based on his training and experience, crossing over the line of the center turn lane at 3:30 a.m. was “an indicator of a possible intoxicated driver.”

As relevant to the factual circumstances of this case, MCL 257.225(1) requires a vehicle’s registration plate to be “attached to the rear of the vehicle.” MCL 257.225(2) provides, in relevant part:

A registration plate shall at all times be securely fastened in a horizontal position to the vehicle for which the plate is issued so as to prevent the plate from swinging. The plate shall be attached at a height of not less than 12 inches from the ground, measured from the bottom of the plate, *in a place and position that is clearly visible*. The plate shall be maintained free from foreign materials that obscure or partially obscure the registration information and *in a clearly legible condition*. . . . [Emphasis added.]

The requirements under MCL 257.225(2) apply not only to traditional metal registration plates but also to temporary paper registration plates. See *Simmons*, 316 Mich App at 326-327. A violation of MCL 257.225 is a civil infraction. MCL 257.225(7).

In *Simmons*, the officer pulled the defendant over because a metal registration plate was not attached at the rear of the vehicle. *Id.* at 324. When the officer pulled the vehicle over, he noticed a piece of paper in the rear window but could not read what was on the paper. *Id.* The officer looked at the paper again from approximately three to four feet away as he was approaching the vehicle but could not see the letters or numbers on the paper. *Id.* “The writing was very dim, which made the paper illegible.” *Id.* The officer explained that he did not stop to read the paper “for safety reasons because there was a potential that the occupants of the car could harm him, get out of the car, or flee the scene,” but the officer “admitted that he did not have a reason to fear for his safety at that time and that it would have taken approximately five seconds to verify the temporary license plate.” *Id.* This Court concluded that the officer “was justified in pulling over the vehicle for a violation of MCL 257.225(2) because the plate was not in a clearly visible position or in a clearly legible condition.” *Id.* at 327.

Here, Frenger testified that he was not able to read what was on the paper in defendant’s rear window at the time he pulled defendant over. As with the officer in *Simmons*, Frenger was justified in conducting the traffic stop of defendant’s vehicle based on the reasonable suspicion that MCL 257.225(2) had been violated by the failure to keep the temporary registration in a clearly visible position or clearly legible condition. *Simmons*, 316 Mich App at 324, 326-327; *Williams*,

236 Mich App at 612. Thus, the traffic stop was justified at its inception. *Williams*, 472 Mich at 314.

The trial court's ruling appeared to ignore the guidance *Simmons* provides for the nature of the relevant inquiry when a temporary registration is involved because the trial court seemed overly focused on the fact that the paper, as opposed to its contents, was clearly visible. The trial court's reliance on an unpublished opinion of this Court, rather than adhering more closely to this Court's published decision in *Simmons* that conclusively resolves this matter is unpersuasive. See MCR 7.215(C).

Moreover, the potential lack of a license plate was not the only reason justifying the traffic stop in this case, and the trial court's sole focus on the license plate issue failed to give adequate attention to the evolving circumstances Frenger encountered. See *Simmons*, 316 Mich App at 326 ("The determination whether a traffic stop is reasonable must necessarily take into account the evolving circumstances with which the officer is faced.") (quotation marks and citation omitted).

Frenger also testified that after noticing the lack of a metal license plate, he observed defendant's vehicle veer over the center line into the center left turn lane before going back into the regular lane of travel. MCL 257.642 provides, in relevant part:

(1) When a roadway has been divided into 2 or more clearly marked lanes for traffic, the following rules in addition to all others consistent with this act apply:

(a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from the lane until the operator has first ascertained that the movement can be made with safety. Upon a roadway with 4 or more lanes that provides for 2-way movement of traffic, a vehicle shall be operated within the extreme right-hand lane except when overtaking and passing, *but shall not cross the center line of the roadway except where making a left turn.*

(b) Upon a roadway that is divided into 3 lanes and provides for 2-way movement of traffic, a vehicle shall not be operated in the center lane except when overtaking and passing another vehicle traveling in the same direction, when the center lane is clear of traffic within a safe distance, or in preparation for a left turn, or where the center lane is at the time allocated exclusively to traffic moving in the same direction the vehicle is proceeding and the allocation is designated by official traffic control devices.

* * *

(3) A person who violates this section is responsible for a civil infraction.
[Emphasis added.]

Having testified that he observed defendant's vehicle crossing the center line into the center turn lane without making a left turn, Frenger had a reasonable suspicion that another civil infraction justifying a traffic stop had been committed by defendant for violating MCL 257.642(1). *Williams*, 236 Mich App at 612.

Furthermore, Frenger testified that his training and experience led him to conclude that there was a possibility that defendant, as driver of the Ram, was intoxicated based on the failure to stay within her lane at 3:30 a.m. Operating a vehicle while intoxicated is prohibited by MCL 257.625(1) and may be a misdemeanor or felony depending on the driver's offense history, see MCL 257.625(9). We conclude that under the totality of the circumstances, Frenger's inference was reasonable in light of his training and experience. *Campbell*, 329 Mich App at 126. Frenger's reasonable suspicion that defendant was violating the law by driving while intoxicated provided another valid justification for the traffic stop. *Williams*, 236 Mich App at 612.

These later developments involving defendant's vehicle crossing the center line and Frenger's reasonable suspicion of intoxicated driving independently support a conclusion that the traffic stop was justified at its inception even if the temporary license plate had been rendered clearly visible and legible by the lights from Frenger's patrol vehicle before Frenger effectuated the stop of defendant's car. *Williams*, 472 Mich at 314; *Simmons*, 316 Mich App at 326.

In reaching this conclusion, we do not take issue with any of the factual findings of the trial court. The trial court seemingly accepted Frenger's testimony as true, concluding that as a matter of law the reasons provided by Frenger did not rise to the level of reasonable suspicion to justify a stop of defendant. In so ruling, the trial court committed clear legal error. Additionally, and contrary to the approach employed by the trial court, the relevant inquiry is not whether there exists "cause[for] a stop." Instead, the relevant inquiry regarding whether this traffic stop was valid is to undertake a common-sense examination of the totality of the circumstances to determine whether the officer "has an articulable and reasonable suspicion that a vehicle or one of its occupants was subject to seizure for a violation of law," *Simmons*, 316 Mich App at 326, bearing in mind that "[a]n officer's conclusion must be drawn from reasonable inferences based on the facts in light of his training and experience." *People v Steele*, 292 Mich App 308, 315; 806 NW2d 753 (2011). As explained above, Frenger had such articulable and reasonable suspicions in this case. Accordingly, we reverse the trial court's suppression and dismissal order and remand for further proceedings consistent with this opinion.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Stephen L. Borrello
/s/ Jane M. Beckering
/s/ Brock A. Swartzle