

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL TYROME ESTELLE,

Defendant-Appellant.

UNPUBLISHED

September 16, 2021

No. 356656

Jackson Circuit Court

LC No. 20-002715-FH

Before: CAMERON, P.J., and JANSEN and GLEICHER, JJ.

PER CURIAM.

In this interlocutory appeal, defendant Michael Tyrome Estelle appeals the trial court’s order denying his motion to suppress evidence and dismiss the charge. We vacate the trial court’s order and remand for further proceedings consistent with this opinion.

I. BACKGROUND

At about 3:00 a.m. on June 28, 2020, Officer Brian Bean of the Jackson City Police Department began following a motor vehicle. Officer Bean noticed that the vehicle was traveling 20 miles per hour in a 30-mile-per-hour zone. Officer Bean suspected that the driver was intoxicated. Officer Bean also believed that the vehicle was impeding traffic and that its slow speed “could have caused a traffic hazard.”

Officer Bean initiated a traffic stop. The driver, who was later identified as defendant, pulled over. Officer Bean noted that defendant was rambling and slurring his speech. Officer Bean instructed defendant to step out of the vehicle so that defendant could submit to field sobriety tests. Defendant complied. After defendant exited the vehicle, Officer Bean noticed “[a] strong odor of intoxicants” coming from defendant’s person. Defendant failed to perform the tests “at a passing level” and was arrested. Thereafter, Officer Bean obtained a warrant to have defendant’s blood drawn, which indicated a blood-alcohol concentration of 0.23 percent. Defendant was charged with operating a motor vehicle while intoxicated, third offense, MCL 257.625(1).

Defendant moved to dismiss the charge, arguing that Officer Bean lacked reasonable suspicion to justify the stop. Defendant argued that our Supreme Court’s holding in *People v*

Parisi, 393 Mich 31; 222 NW2d 757 (1974), established that traveling below the speed limit in the early morning hours did not create a reasonable suspicion of criminal activity. Defendant also argued that there were no other facts that could justify such a suspicion. The prosecutor did not file a response to the motion.

The trial court heard oral argument on the motion, at which point the prosecutor argued that the circumstances justified the stop because they indicated intoxication and because defendant's driving was dangerous because a 10-mile-per-hour difference is of greater significance at lower speeds. The trial court's rationale did not expressly consider *Parisi*. Instead, the trial court recounted a personal experience of being stopped on the highway for driving below the minimum speed limit. The trial court ultimately denied defendant's motions, reasoning:

I think that time of the night, the police are reasonably familiar that a lot of people could be out drinking and closing the bar, that much can be an indicator that at least they can stop and investigate what's going on when somebody's going that much under the speed limit, so I'm gonna hold it's still a lawful search.

Thereafter, defendant filed a delayed application for leave to appeal, and this Court granted leave. *People v Estelle*, unpublished order of the Court of Appeals, entered May 5, 2021 (Docket No. 356656).

II. ANALYSIS

On appeal, defendant argues that the trial court erred by denying his motion to suppress because the evidence established that the traffic stop violated his rights under the Fourth Amendment. We agree.

"We review issues of constitutional law de novo." *People v Parrott*, ___ Mich App ___, ___; ___ NW2d ___ (2021) (Docket No. 350380); slip op at 3, lv pending (quotation marks and citation omitted). "This Court reviews de novo a trial court's ruling on a motion to suppress." *People v Moorman*, 331 Mich App 481, 484; 952 NW2d 597 (2020). "We review for an abuse of discretion a trial court's ruling addressing a motion to dismiss," *People v Boshell*, ___ Mich App ___, ___; ___ NW2d ___ (2021) (Docket Nos. 347207; 347208); slip op at 8, lv pending, which occurs when the trial court "chooses an outcome that falls outside the range of reasonable and principled outcomes," *Parrott*, ___ Mich App at ___; slip op at 3 (quotation marks and citation omitted).

"The Fourth Amendment of the United States Constitution and its counterpart in the Michigan Constitution guarantee the right of persons to be secure against unreasonable searches and seizures." *People v Kazmierczak*, 461 Mich 411, 417; 605 NW2d 667 (2000), citing US Const, Am IV; Const 1963, art 1, § 11. Although an officer generally needs a warrant to search and seize, there are several exceptions to the warrant requirement. *People v Barbarich*, 291 Mich App 468, 472; 807 NW2d 56 (2011). One such exception is for an investigative or *Terry*¹ stop. *Id.* at 473.

¹ *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968).

“A routine traffic stop . . . is a relatively brief encounter” that is akin to a *Terry* stop. *Knowles v Iowa*, 525 US 113, 117; 119 S Ct 484; 142 L Ed 2d 492 (1998).

“A traffic stop is justified if the officer has an articulable and reasonable suspicion that a vehicle or one of its occupants is subject to seizure for a violation of law,” including “a violation of a traffic law.” *People v Simmons*, 316 Mich App 322, 326; 894 NW2d 86 (2016) (quotation marks and citations omitted). The test is objective, *People v Champion*, 452 Mich 92, 98-99; 549 NW2d 849 (1996), and the stop is justified “even if the officer’s subjective intent for stopping the car is based on other factors,” *People v Kavanaugh*, 320 Mich App 293, 299; 907 NW2d 845 (2017). “Reasonable suspicion entails something more than an inchoate or unparticularized suspicion or ‘hunch,’ but less than the level of suspicion required for probable cause.” *Champion*, 452 Mich at 98. “In order to justify an investigative stop, the police must have a particularized suspicion, based on objective observations, that the person stopped has been, is, or is about to engage in some type of criminal activity.” *People v Coscarelli*, 196 Mich App 724, 727; 493 NW2d 525 (1992).

In this case, Officer Bean testified that he stopped defendant’s vehicle (1) because defendant had committed a traffic violation, and (2) because he suspected that defendant was intoxicated.

With respect to whether Officer Bean observed defendant commit a traffic violation, Officer Bean testified that defendant’s vehicle was impeding traffic. MCL 257.676b(1) provides, in relevant part, as follows:

[A] person, without authority, shall not block, obstruct, impede, or otherwise interfere with the normal flow of vehicular, streetcar, or pedestrian traffic upon a public street or highway in this state, by means of a barricade, object, or device, or with his or her person.

In this case, there is no evidence that defendant’s vehicle “block[ed], obstruct[ed], impede[d], or otherwise interfere[d] with the normal flow of . . . traffic[.]” Indeed, although Officer Bean testified that there were other vehicles “around,” Officer Bean agreed that only his vehicle was traveling behind defendant’s vehicle. Officer Bean also agreed that there were not “vehicles driving up [and] hitting their brakes” as a result of defendant’s speed. Additionally, there is no indication that Officer Bean would have been unable to pass defendant’s vehicle had Officer Bean desired to travel more than 20 miles per hour. Indeed, there is no evidence that defendant’s vehicle was traveling between lanes or weaving at any relevant time. Therefore, we conclude that Officer Bean did not possess a reasonable suspicion to stop defendant’s vehicle for impeding traffic. For the same reasons, we conclude that Officer Bean did not possess a reasonable suspicion that defendant was creating a “traffic hazard.”

Officer Bean also testified that it is a violation of the Motor Vehicle Code, MCL 257.1 *et seq.*, to travel 20 miles per hour in a 30 mile-per-hour zone. However, neither Officer Bean nor the prosecutor cited to any portion of the Motor Vehicle Code to support that failing to abide by the posted speed *limit* amounts to a traffic violation. Additionally, there is no evidence to support that the roadway on which defendant was traveling had a posted minimum speed limit. While Officer Bean opined that defendant was intoxicated because he was traveling 10 miles per hour

below the speed limit around 3:00 a.m., our Supreme Court has held that driving below the speed limit in the early morning hours does not create a reasonable suspicion that criminal activity is afoot. *Parisi*, 393 Mich at 35.

In *Parisi*, a police officer observed a vehicle driving through Saline, Michigan, at 3:00 a.m. *Id.* at 33. The vehicle, which was being driven by the defendant, was traveling 25 miles per hour in a 45-mile-per-hour zone. *Id.* The officer stopped the vehicle based in relevant part on the vehicle's speed. *Id.* After approaching the vehicle, the officer smelled "a strong odor of marijuana coming from the vehicle[.]" *Id.* During a search of the vehicle, the defendant was seen "throw[ing] an object into a field," and the object was later determined to be heroin. *Id.* at 34. The defendant was convicted of possession of heroin, and he appealed. *Id.* at 32. Our Supreme Court held that "[g]iven the absence of a minimum speed requirement, erratic driving, interference with traffic or some other reason of substance, we must conclude that" the fact that the defendant was traveling 25 miles per hour in a 45 mile-an-hour zone "was not sufficient to warrant a stop." *Id.* at 35. "Because all else flowed from th[e] initial stop," our Supreme Court reversed the defendant's conviction. *Id.* at 32.

In this case, like in *Parisi*, there is no indication that there was a minimum speed requirement, that defendant was driving erratically, that defendant was interfering with the flow of traffic, or that defendant had committed any other traffic violation. Rather, the evidence only supports that defendant was traveling 10 miles per hour below the posted speed limit in the early morning hours. Under *Parisi*, these facts are not sufficient to support a lawful traffic stop. The trial court therefore erred by concluding that the stop was lawful.

Additionally, any evidence that flowed from the unconstitutional stop is inadmissible as substantive evidence at trial. *Moorman*, 331 Mich App at 485 ("Generally, evidence that is obtained in violation of the Fourth Amendment is inadmissible as substantive evidence in criminal proceedings.") (Quotation marks and citation omitted.) Because the only evidence that supports the charge is evidence that was obtained following the unconstitutional stop, we conclude that the trial court abused its discretion by denying defendant's motion to dismiss.

We vacate the trial court's order denying defendant's motions and remand for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Thomas C. Cameron
/s/ Kathleen Jansen
/s/ Elizabeth L. Gleicher