

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

CALVIN EARL JONES,

Defendant-Appellee.

FOR PUBLICATION

January 27, 2004

9:00 a.m.

No. 242871

Wayne Circuit Court

LC No. 02-005245

Before: Fitzgerald, P.J. and Neff and White, JJ.

NEFF, J.

The prosecutor appeals as of right from a circuit court order of dismissal after a finding that an investigatory stop was unconstitutional.¹ Finding no constitutional violation, we reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I

The facts as established at the preliminary examination are essentially uncontested. A police officer on routine patrol observed defendant's vehicle and its license plate that was in plain view as required by law. MCL 257.225. The officer did not observe any traffic violation, but decided to perform a computer check of the license plate number. The check showed that there were two outstanding warrants for the registered owner of the vehicle. The officer stopped the car to determine if the driver was also the registered owner. The driver, defendant, produced documentation showing that he was the registered owner of the car and also the person named in the outstanding warrants.

The officer asked defendant to step out of the car so he could explain the reason for the stop. Defendant complied and the officer, for safety purposes, asked if defendant had a weapon.

¹ The proper remedy for an illegal search and seizure is suppression of the evidence, not dismissal of the charges. *People v Chambers*, 195 Mich App 118, 120; 489 NW2d 168 (1992). However, when the evidence is the only thing connecting the defendant to the crimes, dismissal is inevitable if the evidence is suppressed. *Id.* at 120-121.

Defendant admitted that he had a gun strapped to his left leg. Defendant was arrested and ultimately charged with carrying a concealed weapon in a vehicle, MCL 750.227, and possession of marijuana, MCL 333.7403(2)(d).²

Defendant was bound over for trial after the preliminary examination. After a brief hearing on defendant's motion to dismiss or, in the alternative, to suppress the evidence, the trial court held that the officer violated defendant's rights under the Fourth Amendment to the United States Constitution when he ran a computer check on the license plate number and then effectuated an investigatory stop based on the information learned from the computer check.

II

The application of the exclusionary rule is a question of law that is reviewed de novo. *People v Custer*, 465 Mich 319, 326; 630 NW2d 870 (2001). Constitutional issues are also reviewed de novo on appeal. *People v Goodin*, 257 Mich App 425, 428; 668 NW2d 392 (2003).

III

The threshold question is whether the police officer's decision to run a computer check of defendant's license plate number in the absence of any traffic violation implicated defendant's Fourth Amendment right to be free of unreasonable search and seizure. If not, the question becomes whether it was proper for the officer to conduct an investigatory stop based on the information he learned from the computer check that led to defendant's arrest.

A

We hold as follows:

1. A police officer may properly run a computer check on a license plate number in plain view even if the vehicle is not observed to violate any traffic law 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.

2. In the absence of evidence to the contrary, a police officer may reasonably suspect that a vehicle is being driven by its registered owner.

3. Where information gleaned from a computer check provides a basis for the arrest or further investigation of the registered owner of the vehicle, a police officer may initiate an investigatory stop to determine if the driver is the registered owner of the vehicle. In the course of the investigatory stop the officer may request identification and may act to reasonably secure his own safety.

² The marijuana was discovered when defendant's car was searched incident to his arrest.

4. Because the officer proceeded lawfully in a) running the computer check; b) making an investigatory stop; and c) establishing that defendant was the registered owner of the vehicle for whom two warrants were outstanding, the officer was justified in arresting defendant and conducting a search of defendant and his car.

B

“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.” US Const, Am IV; Const 1963, art 1, § 11; *People v Kazmierczak*, 461 Mich 411, 417; 605 NW2d 667 (2000). Fourth Amendment interests are only implicated when the government infringes upon a person’s reasonable expectation of privacy. *People v Smith*, 420 Mich 1, 25; 360 NW2d 841 (1984); *People v Taylor*, 253 Mich App 399, 404; 655 NW2d 291 (2002).

A person does not have a reasonable expectation of privacy in a license plate openly displayed on a vehicle³ which, as noted, is required to be in plain view. MCL 257.225. Other state courts have consistently reached the same conclusion, holding that a suspicionless check of a license plate number is not a search. See *Wilkinson v Indiana*, 743 NE2d 1267, 1270 (Ind Ct App 2001); *New Jersey v Lewis*, 288 NJ Super 160, 163-164; 671 A2d 1126 (1996); *People v Brand*, 71 Ill App3d 698; 390 NE2d 65 (1979).

C

An investigatory stop, which is limited to a brief and nonintrusive detention, constitutes a Fourth Amendment seizure. *People v Bloxson*, 205 Mich App 236, 241, 249; 517 NW2d 563 (1994). “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) (footnote omitted). The reasonableness of an officer’s suspicion is determined on a case-by-case basis in light of the totality of the facts and circumstances and specific reasonable inferences he is entitled to draw from the facts in light of his experience. *People v LoCicero (After Remand)*, 453 Mich 496, 501-502; 556 NW2d 498 (1996).

³ This is not, strictly speaking, our Court’s first declaration of this rule. See *People v Taormina*, 130 Mich App 73, 80; 343 NW2d 236 (1983). However, we decline to rely on *Taormina* because it is factually distinguishable.

It was a reasonable suspicion that the driver was the registered owner of the vehicle in the absence of evidence to the contrary.⁴ The police officer's computer check of the vehicle license number returned information that there were two outstanding warrants for the registered owner of the vehicle providing the justification for the investigatory stop of the driver. *People v Champion*, 452 Mich 92, 98; 549 NW2d 849 (1996).

Having made a proper investigatory stop and determining that defendant-driver was indeed the registered owner of the vehicle, the officer lawfully arrested defendant on the outstanding warrants. MCL 764.15(1)(e). Accordingly, the officer validly searched defendant⁵ and his car. *People v Yeoman*, 218 Mich App 406; 554 NW2d 577 (1996).

Reversed and remanded for reinstatement of the charges against defendant. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ Helene N. White

⁴ For instance, if the registered owner was a male and the driver was a female, the officer would not have reasonable grounds to assume that the driver was the owner. See *New Hampshire v Richter*, 145 NH 640, 641-642; 765 A2d 687 (2000); *Minnesota v Pike*, 551 NW2d 919, 922 (Minn 1996); *Village of Lake in the Hills v Lloyd*, 227 Ill App3d 351; 591 NE2d 524 (1992); *Oregon v Panko*, 101 Or App 6, 9; 788 P2d 1026 (1990); *Iowa v Mills*, 458 NW2d 395, 397 (Iowa Ct App 1990).

⁵ As noted, defendant also admitted to carrying the weapon when the officer asked him to get out of the car.

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FITZGERALD, P.J. (*concurring*).

The majority opinion is legally sound and, therefore, I reluctantly concur. My reluctance is based on my concern that random lien checks on license plates will have the unintended result of lawful drivers being subject to unwarranted traffic stops and searches.

/s/ E. Thomas Fitzgerald