

Court of Appeals, State of Michigan

ORDER

People of MI v Kimberly Johnson

Docket No. 305307

LC No. 11-004355-FH

David H. Sawyer
Presiding Judge

Henry William Saad

Patrick M. Meter
Judges

The Court orders that the unpublished per curiam opinion issued in this case on December 6, 2012, is AMENDED to correct a clerical error. The superscript number 2 that appears after the citation "*Champion*, 452 Mich at 101" near the bottom of page 2 is deleted. In all other respects, the December 6, 2012, opinion remains unchanged.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

DEC 19 2012

Date

Larry S. Royster
Chief Clerk

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

UNPUBLISHED
December 6, 2012

v

KIMBERLY JOHNSON,
Defendant-Appellee.

No. 305307
Wayne Circuit Court
LC No. 11-004355-FH

Before: SAWYER, P.J., and SAAD and METER, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendant's motion to quash the information. We reverse and remand for further proceedings.

Defendant was bound over for trial on a charge of possessing a controlled substance (heroin), MCL 333.7403(2)(a)(v), after a preliminary hearing in the district court. The sole witness was the arresting officer, who testified that while parked around the corner from a known drug-dealing location, he and his partner observed what appeared to be a hand-to-hand drug transaction, after which defendant got quickly into her car and drove away without signaling or putting on her seatbelt. The officer and his partner pulled defendant over based on suspicion of drug possession and for failing to use a turn signal and wear a seatbelt. When defendant was reaching into her purse for her license, the officer observed what appeared to be heroin in three knotted plastic baggies. Defendant was then arrested.

The circuit court quashed the information and dismissed the charge after determining that the police lacked justification to detain defendant, that the seizure of the heroin was illegal and evidence of it must be suppressed, and that, therefore, there was no probable cause to bind over defendant.

We review for an abuse of discretion a district court's decision to bind a defendant over for trial. *People v Hudson*, 241 Mich App 268, 276; 615 NW2d 784 (2000). An abuse of discretion occurs when the lower court chooses an outcome that falls outside the principled range of possible outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). This Court does not afford any deference to a circuit court decision on whether to quash an information. *Hudson*, 241 Mich App at 276. "This Court therefore essentially sits in the same position as the circuit court when determining whether the district court abused its discretion. . . . Thus, in simple terms, we review the district court's original exercise of discretion." *Id.*

A district court must bind a defendant over for trial if it finds there is probable cause to believe that a felony has been committed and that the defendant was the one who committed that felony. See MCL 766.13. “Probable cause requires evidence sufficient to make a person of ordinary caution and prudence to conscientiously entertain a reasonable belief of the defendant's guilt. The magistrate, however, need not be without doubts regarding guilt.” *People v Waltonen*, 272 Mich App 678, 684; 728 NW2d 881 (2006) (internal citations and quotation marks omitted).

Defendant argued before the circuit court that the police lacked a reason to stop her vehicle and the stop was merely pretextual. The circuit court agreed. Police may not make a traffic stop merely as a pretext to search for evidence of a crime. *People v Haney*, 192 Mich App 207, 209; 480 NW2d 322 (1991). However, police can detain a person when they have reasonable suspicion that criminal activity is afoot. *People v Champion*, 452 Mich 92, 98; 549 NW2d 849 (1996). Further, an officer who witnesses a traffic violation has probable cause to stop that vehicle. See *Haney*, 192 Mich App at 210-211.

Here, the officer testified that he witnessed two separate traffic violations. Either of these suspected violations was sufficient to detain defendant because they created a reasonable suspicion that defendant had violated MCL 257.648(1) and MCL 257.710e(3).¹ Further, the fact that police may have suspected defendant of possession of drugs did not negate their ability to detain defendant based on the traffic violations:

[T]here were objective and reasonable grounds to stop the vehicle. If a stop of a motor vehicle is objectively lawful, the subjective intent of the officer is irrelevant to the validity of the stop or a subsequent arrest or search and seizure of evidence. That is, *a valid stop on the basis of a traffic violation will not be invalidated on the ground that the officer had an ulterior motive when he or she made the stop.* [*People v Labelle*, 478 Mich 891, 891; 732 NW2d 114 (2007) (citation omitted; emphasis added).]

Once the traffic stop occurred, the police could seize evidence in plain view without a warrant. *Champion*, 452 Mich at 101.² Therefore, the circuit court erred in quashing the information based on a finding that the police lacked a basis to stop defendant's car and seize the heroin seen in plain view.

¹ Contrary to defendant's argument, we find it reasonable for an officer to have believed that MCL 257.648(1) applied to the vehicle-turning activity here. See, e.g., *People v Hrlic*, 277 Mich App 260, 266; 744 NW2d 221 (2007) (“the purpose of the statute is to provide notice of movements along the route that could affect other motorists”). Moreover, even though we need not reach this issue, it appears the police had reasonable suspicion to detain based on witnessing what they believed to be a hand-to-hand drug transaction. See *Champion*, 452 Mich at 98 (discussing “reasonable suspicion”).

We reverse and remand for further proceedings. We do not retain jurisdiction.

/s/ David H. Sawyer

/s/ Henry William Saad

/s/ Patrick M. Meter