STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 21, 2015
v	No. 320399 Emmet Circuit Court
JONATHAN TED KILEY, Defendant-Appellant.	LC No. 13-003854-FH

Before: O'CONNELL, P.J., and FORT HOOD and GADOLA, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of operating a motor vehicle while intoxicated, third offense, MCL 257.625(1), (9)(c), and operating a motor vehicle with a suspended license, MCL 257.904(3)(a). Defendant was sentenced to nine months' imprisonment, with credit for time served. We affirm.

On May 10, 2013, at approximately 9:30 p.m., police officer Matthew Leirstein pulled over the vehicle defendant was driving. Officer Leirstein had checked the vehicle's license plate and found that the car belonged to a woman whose license was suspended or revoked. Officer Leirstein, who testified that he did not know the driver's gender before approaching the car, pulled defendant over and approached the vehicle. At this point, Officer Leirstein realized defendant was a man, not a woman. Officer Leirstein continued to detain defendant, and asked for his license because "when we make a stop, it's normal procedure to ask for license, registration, and proof of insurance." When Officer Leirstein approached the vehicle, he smelled alcohol. Officer Leirstein performed field sobriety tests on defendant, which defendant failed. Defendant then admitted he had consumed alcohol. A blood alcohol test was performed and defendant's blood alcohol level was found to be .15.

Defendant was subsequently charged and filed a motion to suppress the evidence obtained after the stop and dismiss the case, arguing that the initial stop of his car was not supported by reasonable suspicion. The trial court found Officer Leirstein's testimony at the hearing on the motion to suppress credible, particularly that Officer Leirstein did not know that defendant was a man before he pulled him over. The trial court denied defendant's motion to suppress pursuant to *People v Jones*, 260 Mich App 424; 678 NW2d 627 (2004), holding that the initial stop and continued detention of defendant were reasonable.

Defendant argues that the trial court erred in denying his motion to suppress. Specifically, defendant first asserts that the police lacked reasonable suspicion to stop his vehicle. Defendant further argues that, even assuming Officer Leirstein had reasonable suspicion to stop the vehicle, his continued detention after he knew defendant's gender was unreasonable. We disagree.

This Court reviews a trial court's findings of fact on a motion to suppress for clear error and its ultimate decision de novo. *People v Hyde*, 285 Mich App 428, 436; 775 NW2d 833 (2009). This Court reviews de novo "whether the Fourth Amendment was violated and whether an exclusionary rule applies." *Id*. "A finding of fact is clearly erroneous if, after a review of the entire record, an appellate court is left with a definite and firm conviction that a mistake has been made." *People v Wilkens*, 267 Mich App 728, 732; 705 NW2d 728 (2005) (citation omitted).

The Fourth Amendment to the United States Constitution and Article 1, § 11 of 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). In general, a police officer is permitted "to make a brief investigative stop (a '*Terry*[1] stop') and detain a person if the officer has a reasonable, articulable suspicion that criminal activity is afoot." *People v Steele*, 292 Mich App 308, 314; 806 NW2d 753 (2011). "The reasonableness of an officer's suspicion is determined case by case on the basis of the totality of all the facts and circumstances" and "reasonable inferences based on the facts in light of his training and experience." *Id*. at 314-315.

In *Jones*, 260 Mich App 424, a police officer on routine patrol observed the defendant's vehicle and performed a computer check on the license plate number, revealing that there were two outstanding warrants for the registered owner. *Id*. at 426. The officer stopped the vehicle to determine if the driver was the owner. *Id*. The driver, the defendant, was the owner of the vehicle and the person named in the outstanding warrants. *Id*. After being charged, the defendant filed a motion to suppress, asserting that his Fourth Amendment rights were violated when the officer ran a computer check on the license plate and initiated an investigative stop. *Id*. at 427. This Court held that "[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." *Id*. at 427-428. The Court also held that "[i]n the absence of evidence to the contrary, a police officer may reasonably suspect that a vehicle is being driven by its registered owner." *Id*. at 428.

> 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. [*Id*. at 428.]

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

Accordingly, the Court held that the stop was constitutional. *Id*. at 430. In a footnote, the Court further explained its holding that "[i]n the absence of evidence to the contrary, a police officer may reasonably suspect that a vehicle is being driven by its registered owner." *Id*. at 430 n 4. The Court explained, in dicta, "[f]or 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." *Id*.

As an initial proposition, it is undisputed that Officer Leirstein was entitled to run a computer check of the license plate number of the vehicle, even in the absence of reasonable suspicion or probable cause to believe that a traffic violation or crime had been or was being committed. *Id.* at 428. Defendant does not dispute this fact on appeal.

Defendant first asserts that Officer Leirstein lacked reasonable suspicion to stop the vehicle because he lacked an articulable suspicion that the car's owner, a woman, was driving, because he could not ascertain the sex of the driver. We disagree. This argument is contrary to the holding in *Jones*, where this Court stated, "[i]n the absence of evidence to the contrary, a police officer may reasonably suspect that a vehicle is being driven by its registered owner." *Id*. Officer Leirstein testified that he did not know the sex of the driver before he stopped the car, and the trial court found Officer Leirstein's testimony credible. Accordingly, there was no evidence to contradict the reasonable suspicion that the car was being driven by its owner. See *id*.

Defendant next asserts that, even assuming there was reasonable suspicion to stop the vehicle, the continued detention of defendant after Officer Leirstein realized he was male and not female was unreasonable. We disagree.

First, we agree with the trial court's analysis. As explained above, the traffic stop was based on reasonable suspicion. "In the course of the investigatory stop the officer may request identification[.]" *Id*. at 428. We do not agree that Officer Leirstein was required to abruptly stop his investigation upon realizing defendant was male and say nothing to defendant by way of explanation for the stop. After making a lawful investigatory stop, it was appropriate for Officer Leirstein to proceed with routine procedure and ask defendant for his driver's license. See *id*.; see also *People v Davis*, 250 Mich App 357, 364-368; 649 NW2d 94 (2002) (holding that an officer conducting a routine traffic stop is permitted as a matter of course to run a LEIN check on the driver and the vehicle). Further, defendant provides no support for his assertion that if the basis for an investigatory stop ceases, the officer must immediately stop the investigation. Rather, our Supreme Court has stated, "[u]nder *Terry*, 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 v Ohio*, 392 US 1, 20; 88 S Ct 1868; 20 L Ed 2d 889 (1968) (emphasis added). Here, Officer Leirstein's stop was justified at its inception to determine the owner of the vehicle. Officer Leirstein's continued, minimal investigation into the driver's identification was reasonably related in scope to the circumstances justifying the stop.

Moreover, "[t]he reasonableness of an officer's suspicion is determined case by case on the basis of the totality of all the facts and circumstances." *Steele*, 292 Mich App at 314. In this

case, specifically, additional facts were present that further support our holding. We agree with the prosecution that upon approaching defendant's vehicle, independent suspicion arose based on the fact that Officer Leirstein smelled alcohol. While a precise timeline of when Officer Leirstein realized defendant was male and when he smelled alcohol is unclear from the record, our overall impression is that the events happened fluidly. Therefore, even assuming the reasonable suspicion justifying the initial stop no longer existed, Officer Leirstein had a basis to continue the stop and investigate whether defendant was intoxicated.

Affirmed.

/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood
/s/ /Michael F. Gadola