7-9-BC

NO. 07-1964

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-vs-

LONNIE RAY DAVIS,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRIEF FOR THE UNITED STATES

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

WAIVER OF ORAL ARGUMENT

The government respectfully submits that this case can, and should, be decided without oral argument.

ISSUE PRESENTED

Whether the District Court Erred When It Denied Defendant's Motion To Suppress Evidence Seized After a Traffic Stop.

STATEMENT OF THE CASE

Defendant Lonnie Ray Davis was indicted by a federal grand jury in the Eastern District of Michigan on February 22, 2006, charging him with felon in possession of a firearm and possession with intent to distribute cocaine base, in violation of 18 U.S.C. § 922(g)(1) and 21 U.S.C. § 841(a), respectively. (R.1: Indictment/ JA 6). These charges arose as a result of a traffic stop that occurred on January 13, 2006. On April 20, 2007, Davis pleaded guilty to counts one and two of the indictment. On July 27, 2006, the district court sentenced Davis concurrently to 120 months on count one and 188 months on count two. (R. 28 Judgment and Conviction Order/JA 42). Davis filed a timely notice of appeal on August 6, 2007. (R. 26: Notice of Appeal/JA 41).

STATEMENT OF FACTS

On January 13, 2006, Westland police officers stopped the car Lonnie Ray Davis was driving. (PSR, ¶8). When the officers approached the car, Davis informed them immediately that he did not have a driver's license. (PSR, ¶8). Davis was placed under arrest. (PSR, ¶8). During the search incident to arrest,

officers recovered on Davis's person $655.00 in cash, a charged stun gun in a holster, and two knotted baggies containing approximately 23.9 grams of cocaine base. (PSR, ¶8). As Davis was being escorted to the patrol car, he told the officers that there was a loaded pistol under the driver's seat. (PSR, ¶8). A search of the vehicle revealed a loaded Grendel, .380 caliber pistol with an obliterated serial number. (PSR, ¶8). Davis admitted during the plea hearing that he carried the firearm after being convicted of a felony offense. (Plea Transcript: 28-29/JA 92-93; Rule 11 Plea Agreement: 2-3/JA 25-26). Davis also admitted to possessing cocaine base with the intent to distribute it. (Plea Transcript: 30/JA 94; Rule 11 Plea Agreement: 2-3/ JA 25-26).

Prior to his guilty plea, Davis challenged the traffic stop and motioned the district court to suppress the evidence. (Suppression Hearing Transcript:/JA 47-64). The facts regarding the traffic stop were not in dispute. (Suppression Hearing Transcript at 5/JA 51). The police stopped Davis's car because he had an object dangling from his rear view mirror – a violation of the Michigan Motor Vehicle Code. (Suppression Hearing Transcript at 11//JA 57). The district court heard arguments from both parties and ruled the traffic stop was proper. (Suppression Hearing Transcript at 16/JA 62). Upon viewing the ornament, which was admitted into evidence, the district court concluded the officer had a good

faith belief that a violation occurred. (Suppression Hearing Transcript at 10, 16/JA 56, 62).

SUMMARY OF THE ARGUMENT

The district court did not err when it concluded that the police had probable cause to make a traffic stop of Davis's vehicle. Thus, the evidence recovered after the traffic stop did not violate the Fourth Amendment.

ARGUMENT

THE DISTRICT COURT PROPERLY DENIED DAVIS'S MOTION TO SUPPRESS EVIDENCE BECAUSE THE STOP OF HIS VEHICLE WAS SUPPORTED BY PROBABLE CAUSE.

A. Standard of Review.

In reviewing a district court's denial of a suppression motion, this Court accepts its factual findings unless they are clearly erroneous and considers its legal conclusions *de novo*. *United States v. Williams*, 224 F.3d 530, 532 (6th Cir. 2000).

B. The Stop Of Davis's Vehicle Was Supported By Probable Cause.

If an officer has probable cause to believe that a traffic violation has occurred or was occurring, the resulting stop is not unlawful and does not violate the Fourth Amendment. *United States v. Ferguson*, 8 F.3d 385, 391 (6th Cir.

1993). Probable cause is defined as reasonable grounds for belief, supported by less than prima facie proof, but more than mere suspicion. *United States v. Bennett*, 905 F.2d 931, 934 (6th Cir. 1990). "[A] determination that reasonable suspicion exists ... need not rule out the possibility of innocent conduct." *Illinois v. Wardlow*, 528 U.S. 119, 125 (2000).

In this case, the police observed a stuffed animal hanging from Davis's rear view mirror. (Suppression Hearing Transcript: 7/JA 53). Pursuant to M.C.L. § 257.709(1)(c), a person shall not drive a motor vehicle with a dangling ornament or other suspended object that obstructs the vision of the driver of the vehicle. *Michigan Compiled Laws § 257.709(1)(c)*. The statute makes no reference to the size of the suspended object. Thus, the police had probable cause to stop Davis's car and investigate whether the dangling ornament compromised his vision.

The district court agreed and upon observing the ornament commented, "I'm not sure I could say that a vigilant officer concerned about vehicle safety would not have had a good faith belief that one or two chances out of a hundred it could have obstructed the vision of the driver." (Suppression Hearing Transcript at 6, 14 /JA 52, 60). During its oral opinion on the motion, the district court underscored that "inherent within [the] statute is a judgment call on the part of the officer who observes a violation." (Suppression Hearing Transcript at 14/JA 60).

The district court stated, "it's not the role of the Court to second guess officers' on-the-street judgments." (Suppression Hearing Transcript at 15/JA 61). Because the ornament could have caused, 'an obstruction sufficient to create a dangerous situation,' the district court concluded that the traffic stop was proper. (Suppression Hearing Transcript at 16/JA 62).

In his brief, Davis relies upon *People v. White,* 107 Cal.App.4th 636 (2003). In *White*, the officer believed that a triangular air freshener hanging "in a stationary position" from the rear view mirror of the defendant's car was a violation of Vehicle Code section 26708 (a)(2). *Id.* at 641-642. The state court judge agreed with the officer. However, the California Court of Appeals ruled it was not reasonable for the officer to believe that the object he observed may have obstructed or reduced the driver's clear view. *Id.* at 642.

In contrast to the air freshener in *White*, there is no evidence to suggest the ornament in this case was stationary. Here, the object was approximately four inches long and hanging by a three inch string. (Appellant's Brief: Exhibit #2/JA 99). Further, the ornament was large enough for the officer to observe from his patrol car. These circumstances, coupled with the fact that it was dark outside[1],

[1]The traffic stop occurred at approximately 2:10 a.m.

made it reasonable for the officer to believe Davis's vision may have been obstructed by this swinging object.

Davis also relies upon *People v. Arias*, 159 P.3d 137 (Colo. 2007). In *Arias,* the defendant was driving a pick-up truck with a tree-shaped air freshener hanging from the rear view mirror. The officer claimed he observed the air freshener through the truck's back privacy glass. Accordingly, he initiated a traffic stop based on a Colorado statute which prohibits the obstruction of a driver's vision. After the traffic stop was conducted, the defendant was arrested on an outstanding warrant and for driving with a suspended licence. During a search incident to arrest, marijuana and cocaine were recovered. The Colorado Supreme Court upheld the decision to suppress evidence and deferred to the trial court's findings. *Id.* at 139. In this case, the district court's findings should be given due deference. The district court observed the ornament and regarded the officer's on-the-street judgment as reasonable. Accordingly, the district court's ruling should be upheld.

CONCLUSION

For all of these reasons, this Court should affirm Davis's conviction.

Respectfully submitted,

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Date: March 18, 2008

CERTIFICATE OF SERVICE & FILING

I certify that on this 18 day of March, 2008, I served two copies of the attached **Brief for the United States** on opposing counsel by depositing it in the United States mails in a postage-paid envelope addressed to:

Richard Helfrick
Office of the Federal Defender
613 Abbott, 5th Floor
Detroit, MI 48226

I further certify that the attached original Brief for the United States and six copies was filed with the Clerk of the United States Court of Appeals for the Sixth Circuit by placing it in the United States mails, with postage prepaid and addressed to the Clerk of the Court, on the same date.

Kathleen A. Puckett

Kathleen A. Puckett, Legal Assistant
United States Attorney's Office

APPELLEE'S DESIGNATION OF RECORD

Appellee, pursuant to Sixth Circuit Rule 30(b), hereby designates the following filings in the district's record as items to be included in the joint appendix:

RECORD NO.	DOCUMENT	DATE
1	Indictment	2/22/2006
24	Plea Agreement	4/20/2007
26	Notice of Appeal	8/06/2007
28	Judgment and Conviction Order	8/15/2007
	Presentence Report	

TRANSCRIPT	DATE	PAGE(S)
Plea	4/20/2007	28-30
Suppression Hrg.	6/28/06	5-7, 10-11, 14-16