



TO: Members of the Troy City Council
FROM: Lori Grigg Bluhm, City Attorney
Allan T. Motzny, Assistant City Attorney
DATE: March 22, 2010
SUBJECT: Troy v Ziegler

This case involves an appeal of a drunk driving charge from the 52-4 Judicial District Court (Troy City Code, Chapter 106, Section 5.15 (1)). The Defendant, Eric Ziegler, was initially stopped by Troy Sgt. Diane Campell, who was patrolling on April 5, 2009, around midnight, near Congregation Shir Tikva. The extra patrol was in response to recent terrorist threats and activity targeting Jewish Temples. Sgt. Campbell observed the Defendant pull in to the parking lot of the temple, and quickly leave upon seeing her police vehicle. Based upon the evasiveness of his maneuvers and the totality of the circumstances, including the recent terrorist concerns and the seclusion of the parking lot (especially at that time of night), Sgt. Campbell pulled over the driver to further investigate. Although she initially intended to inquire about his presence in the parking lot, her initial contact revealed that the driver had been drinking. She then completed a drunk driving investigation which resulted in his arrest.

Defendant later challenged the initial stop, and filed a motion asking for a dismissal of the criminal drunk driving charge. After an evidentiary hearing, Judge Michael Martone found that Sgt. Campbell had a "reasonable, articulable suspicion" that the person committed or is about to commit a crime," and therefore a brief investigatory stop of the vehicle was permitted. The Defendant then appealed this decision to the Oakland County Circuit Court, Judge Nanci J. Grant. Judge Grant, in her attached opinion, affirmed Judge Martone's decision as "not clearly erroneous."

On March 18, 2010, the Defendant filed an application for leave to appeal with the Michigan Court of Appeals. Defendant has already exhausted his appeal of right at the Oakland County Circuit Court. However, the Court of Appeals, in its discretion, can grant the application if the panel decides that the case is worthy of consideration. If the application for leave to appeal is granted, then the appeal will proceed as though it were an appeal as of right.

Absent contrary direction from City Council, we will file a response to the application for leave to appeal, which is due on or before April 8, 2010.

Please let us know if you have any questions.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE CITY OF TROY,

Plaintiff,

-v-

Case Number 2009-DA9051-AR
Honorable Nanci J. Grant

ERIK ZIEGLER,

Defendant.

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ORDER AND OPINION

At a session of said Court, held in the
Courthouse in the City of Pontiac, County of
Oakland, State of Michigan on the 25th day of
February, 2010.

PRESENT: THE HONORABLE NANCI J. GRANT, CIRCUIT JUDGE

Defendant appeals as of right from the trial court's denial of a motion to suppress. This Court affirms.

I.

Defendant was arrested following a traffic stop on April 5, 2009 on suspicion of drunk driving. Defendant challenged the charges on grounds that the traffic stop was illegal. Thus, the trial court held an evidentiary hearing to assess the claim. At the hearing, the arresting officer testified that on the night in question, she was in her patrol car in the parking lot of the Shir Tikvah Temple parking lot in Troy, Michigan. At the time, the police had been providing "extra patrols for that temple" due to unspecified

"alerts and bulletins" involving "Jewish Temples and possible threats." When asked to elaborate on this procedure, the officer explained that "it could be something that comes across from like the FBI" regarding "recent information that people are going to be targeting such and such type either businesses or groups or whatever."

While in the parking lot, the officer observed Defendant's vehicle pull into the parking lot, after which it "shined its headlights on me and then appeared to go right back out onto Northfield Parkway real quick." This gave the officer the "impression" that "the driver of that truck recognized or saw [her] as a police car." This was suspicious because the lot "was not an obvious place to pull in" to turn around. The officer also ran the vehicle's license plate, and discovered that the vehicle was registered to an address in Grand Rapids. As a result, the officer wanted to determine the driver's "intent" in "turning into that parking lot." Thus, the officer followed the vehicle out of the parking lot and effectuated a traffic stop. During the stop, the officer acquired additional evidence suggesting that Defendant was intoxicated, and he was arrested and charged accordingly.

In considering the motion, the trial court focused on the "secluded" nature of the parking lot, due in part to its distance (150 feet) from the roadway, and the time of night. It appears that the trial court also placed great weight on the officer's testimony regarding the "alerts and bulletins" the police had received, and the unspecified requests "to keep up extra surveillance," as the court characterized Defendant's arrival in the parking lot as a potential "terrorist situation." In this context, the court concluded, the stop was reasonable for Fourth Amendment purposes. Thus, the court denied the motion, and from that ruling Defendant appeals.

II.

This Court will not disturb a trial court's ruling at a suppression hearing unless that ruling is found to be clearly erroneous. Resolution of facts about which there is conflicting testimony is a decision to be made initially by the trial court. The trial judge's resolution of a factual issue is entitled to deference. *People v. White*, 401 Mich. 482 (1977).

The Fourth Amendment to the United States Constitution proscribes seizures which are not justified by probable cause. *Dunaway v. New York*, 442 U.S. 200 (1979). In *Terry v. Ohio*, 392 U.S. 1 (1968), the Supreme Court noted that whenever a police officer accosts an individual and restrains his freedom to walk away he has "seized" that person. *Id.* However, not all seizures of a person must be sustained by probable cause. Terry created a limited exception to the requirement of probable cause in a "seizure" of a person if the police officer has a reasonable, articulable suspicion that the person has committed or is about to commit a crime. See *People v. Sovoda*, 155 Mich.App. 735 (1986). Such suspicion will justify a traffic stop. See *People v. LoCicero*, 453 Mich 496 (1996).

On appeal, the prosecution characterizes the Temple's parking lot as "a place where extra patrols

were needed due to concerns with terrorism," in light of the "alerts and bulletins" the police had received involving "Jewish Temples and possible threats." The prosecution also relies heavily on this aspect of the case in establishing reasonable suspicion, as it gave the officer a legitimate belief that Defendant was involved not just in criminal activity, but in criminal activity specifically "related to terrorism." And the Court agrees that this is a significant factor. In fact, the Court believes that the legality of the stop turns on this issue, as the balance of Defendant's conduct does not appear to suggest any other type of criminal activity.

To be sure, the prosecution provided few specifics in the trial court regarding the "alerts and bulletins" that gave rise to a need for extra patrols, except that some of them involved "Jewish Temples and possible threats". At the same time, however, there was absolutely no evidence disputing the officer's characterization of these reports. Moreover, the trial court's ruling on Defendant's motion implies a finding that the officer was credible in this regard, and a trial judge's resolution of factual issues is entitled to deference. *White, supra*. Thus, these allegations must be taken as true on appeal. The Court also finds that such concerns support the reasonableness of the stop, particularly as the "alerts and bulletins" were specific to "Jewish Temples," i.e., precisely where this encounter occurred.

In other words, given the evidence regarding the "alerts and bulletins," the nature of the establishment, and the relative isolation of the parking lot vis-à-vis the road, this Court cannot say that the trial court's ruling regarding the reasonableness of the stop was clearly erroneous. Therefore, Defendant is not entitled to relief on this basis.

Affirmed.

/s/ **NANCI J. GRANT**

NANCI J. GRANT, Circuit Judge

PROOF OF SERVICE

I certify that a copy of the above instrument was served upon the attorneys of record in the above case via Wiznet e-file and serve to the attorneys of record on 2/25/10.

/s/ *Kathleen M. Morton*
Judicial Assistant to the Hon. Nanci J. Grant