# STATE OF MICHIGAN

# COURT OF APPEALS

| | |
|---|---|
| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>December 18, 2008 |
| v | No. 279501<br>Wayne Circuit Court |
| DEMETRIUS ALLEN ECKFORD,<br><br>Defendant-Appellant. | LC No. 07-005476-01 |

Before: Murray, P.J., and Markey and Wilder, JJ.

PER CURIAM.

Defendant was convicted by a jury of being a felon in possession of a firearm, MCL 750.224f, carrying a concealed weapon, MCL 750.227, and possession of a firearm during the commission of a felony, second offense, MCL 750.227b. He was sentenced to concurrent terms of 23 to 60 months' imprisonment each for the felon in possession and carrying a concealed weapon convictions, and to five years' consecutive imprisonment for the felony-firearm, second conviction. Defendant appeals by right. We affirm.

On February 6, 2007, Detroit police officer Jason Kile and his two partners were traveling in a semi-marked vehicle, which had lights and sirens but no police markings. Around 12:30 a.m., while in the police vehicle, Kile saw defendant standing by the door of a gas station. The officers saw defendant for about 5 seconds as they drove by. When they came back approximately five minutes later, defendant was still standing in the same place. As the officers began to drive into the gas station, defendant quickly walked down the street and turned south onto another road.

The officers followed defendant in their vehicle. Defendant was walking in the middle of the street despite the presence of sidewalks. Defendant walked up a driveway and knocked on the side door of the house. The officers pulled their vehicle up to the mouth of the driveway and Kile exited the vehicle. Although Kile was not in uniform, his badge was visible hanging around his neck. Kile identified himself as a police officer and stated that he wanted to talk to defendant. Defendant looked at Kile, grabbed his right side, and ran through the backyard. When defendant grabbed his side, Kile pulled his weapon; he ran after defendant holding a flashlight in his left hand and his gun in his right.

Defendant ran to the back of the yard where he threw a blue-steel semi-automatic weapon over a chain link fence into an alleyway. He then ran approximately another five feet, stopped,

and put his hands up to surrender. Kile handcuffed defendant, left him with his partners, and climbed the fence to retrieve the weapon.

Defendant prepared his own motion to suppress evidence of the weapon alleging an improper search and seizure. That motion was initially heard and denied on April 27, 2007. Although defendant's appointed counsel was present at that motion hearing, he did not represent him during any portion of the proceeding related to the motion to suppress. On appeal, after the jury trial and conviction, this Court remanded for a new suppression hearing where counsel acted on defendant's behalf. The motion to suppress was once again denied, and the evidentiary issue is now before this Court.

This issue was preserved for appeal when it was raised before and decided by the trial court. *People v Metamora Water Service, Inc.*, 276 Mich App 376, 381; 741 NW2d 61 (2007).

A trial court's factual findings in a suppression hearing are reviewed for clear error. *People v Jenkins*, 472 Mich 26, 31; 691 NW2d 759 (2005). A decision is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake was made. *People v Rasmussen*, 191 Mich App 721, 724; 478 NW2d 752 (1992). But, a trial court's conclusions of law related to a decision to suppress evidence are reviewed de novo. *People v Zahn*, 234 Mich App 438, 445; 594 NW2d 120 (1999).

Both the United States Constitution and 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. The Fourth Amendment protections apply in all seizures of a person, even when the seizure is only a brief detention and not a full-blown arrest situation. *People v Shabaz*, 424 Mich 42, 52; 378 NW2d 451 (1985). When a seizure is unreasonable, the Court must suppress the evidence derived from such seizure as fruit of the poisonous tree. *Shabaz, supra* at 65, citing *Wong Sun v United States*, 371 US 471; 83 S Ct 407; 9 L Ed 2d 441 (1963). Conversely, if a seizure is reasonable, the evidence derived from such seizure need not be suppressed. See *Id.*

A Fourth Amendment seizure occurs only if in view of all the circumstances a reasonable person would believe he was not free to leave. *Jenkins, supra* at 32. There is no seizure when an officer approaches a person and requests voluntary cooperation. *Id.* at 33. But a consensual encounter with a police officer can become an investigatory stop based on the totality of the circumstances. *Id*, at 35.

At the time of Kile's initial contact with defendant, he identified himself as an officer and stated that he wanted to talk to defendant. Such conduct by an officer is not enough to be considered a seizure. See *Jenkins, supra* at 33. A seizure occurred, however, when Kile drew his weapon and ran after defendant because a reasonable person would not believe he was free to leave with an officer's weapon drawn upon him. The question then is whether Kile had a reasonable suspicion of criminal behavior based on the totality of circumstances at the time he drew his weapon to pursue defendant.

At the time Kile drew his weapon, the circumstances included officers twice noticing defendant standing in the same high-crime location outside a gas station within an interval of about five minutes, defendant walking away from the gas station when the officers approached, defendant turning down a cross street and walking in the middle of the street despite the presence

of sidewalks, defendant reaching for his waist suggesting the presence of a weapon or contraband and immediately fleeing the officer when approached on foot. We find that the totality of circumstances at the time officer Kile drew his weapon, and therefore initiated a seizure, gave rise to reasonable suspicion that criminal activity was afoot and led to a valid seizure of defendant.

We affirm.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Kurtis T. Wilder