

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

UNPUBLISHED
November 20, 2014

v

HECTOR LUIS MEDINA,

No. 321086
Wayne Circuit Court
LC No. 13-000635-FH

Defendant-Appellee.

Before: BORRELLO, P.J., and WILDER and STEPHENS, JJ.

PER CURIAM.

The prosecution appeals by leave granted the circuit court's order suppressing evidence of a gun. We reverse.

The charges in this case arise from defendant's interaction with Detroit police officers Shaun Dunning, Derrick Dixon, and Brian Gibbins on July 26, 2012. At 11:00 p.m., the police officers, while on routine patrol in a police car, observed defendant walking on the sidewalk with a gun in his right hand. The police officers decided to investigate defendant. Officer Dixon made a U-turn and parked the police car behind defendant. The police officers got out of the vehicle, identified themselves as police officers and told defendant to drop the gun. At that point, defendant turned around and pointed the gun at the police officers. Defendant was subsequently charged, as a second habitual offender, MCL 769.10, with three counts of felonious assault, MCL 750.82, and three counts of assaulting, obstructing or resisting a police officer, MCL 750.81d.

Defendant moved to suppress evidence of the gun and argued that the police officers did not have a reasonable suspicion to stop defendant because it is legal to openly carry a firearm in Michigan. The prosecution argued that police officers are allowed to interact with citizens without infringing upon a person's Fourth Amendment rights. The circuit court subsequently entered an order granting defendant's motion to suppress the evidence of the gun.

The prosecution contends that the trial court erred in suppressing evidence of the gun. We agree.

This Court reviews a trial court's factual findings in a suppression hearing for clear error. *People v Jenkins*, 472 Mich 26, 31; 691 NW2d 759 (2005). This Court reviews de novo the trial

court's ultimate ruling on the motion to suppress. *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005).

Both the United States and Michigan Constitutions protect persons against unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11; *People v Bolduc*, 263 Mich App 430, 437; 688 NW2d 316 (2004). A search or seizure conducted without a warrant is presumptively unreasonable unless it falls within one of several established exceptions. *People v Barbarich*, 291 Mich App 468, 472; 807 NW2d 56 (2011), citing *People v Champion*, 452 Mich 92, 98; 549 NW2d 849 (1996). An exception to the warrant requirement is an investigative stop, also known as a *Terry* stop. *Id.* at 473, citing *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968). An investigatory *Terry* stop constitutes a seizure and requires specific and articulable facts sufficient to give rise to a reasonable suspicion that the person detained has committed or is committing a crime. *Id.* If a police officer has a reasonable suspicion to believe a person has committed or is committing a crime, the officer may briefly stop that person for further investigation and the scope of any search or seizure must be limited to quickly confirm or dispel the officer's suspicion. *Id.*

Reasonable suspicion is more than an inchoate or unparticularized suspicion or hunch. *Champion*, 452 Mich at 98. A series of acts, even though innocent when viewed separately, may warrant further investigation when viewed together. *United States v Sokolow*, 490 US 1, 9-10; 109 S Ct 1581; 104 L Ed 2d 1 (1989). The court should "view the totality of the circumstances in light of commonsense judgments and inferences about human behavior" and "should be careful not to apply overly technical reviews of a police officer's assessment of whether criminal activity is afoot." *Barbarich*, 291 Mich App at 474. Common sense and everyday life experiences predominate over uncompromising standards. *People v Oliver*, 464 Mich 184, 192; 627 NW2d 297 (2001). "When there has been a violation of a defendant's Fourth Amendment rights, the exclusionary rule generally bars the use of the disputed evidence at trial." *People v Short*, 289 Mich App 538, 544; 797 NW2d 665 (2010).

The testimony at the preliminary examination demonstrated that Officers Dunning, Dixon, and Gibbings, had a reasonable suspicion to perform an investigatory stop of defendant. The police officers had more than an inchoate or unparticularized hunch when the police officers saw defendant walking down the street at night, with a gun in his right hand. Under the totality of the circumstances, a reasonable suspicion existed for the police officers to conduct an investigatory stop. Thus the initial stop was legal.

Granting the motion to suppress was erroneous for additional reasons: because an independent crime occurred after the stop and because there was probable cause for a seizure of the defendant's person after the legal investigatory stop.

The evidence of the gun is admissible because defendant committed an independent crime directed at police officers after the initial stop. In *People v Corr*, 287 Mich App 499, 505; 788 NW2d 860 (2010), the defendant sought to exclude police officer testimony that the defendant assaulted, resisted or obstructed a police officer after the defendant was subjected to an unlawful search and seizure. The Court held:

[T]he exclusionary rule does not act to bar the introduction of evidence of independent crimes directed at police officers as a reaction to an illegal arrest or search. Any other conclusion would effectively give a person who has been the victim of an illegal seizure the right to employ whatever means available, no matter how violent, to elude capture. [*Id.* at 509, citing *People v Daniels*, 186 Mich App 77, 82; 463 NW2d 131 (1990).]

In the present case, defendant's reaction to an alleged unlawful seizure, pointing a gun at Officers Dunning, Dixon, and Gibbings, was clearly an independent crime (felonious assault) directed at police officers. Given that the exclusionary rule does not act to bar the introduction of evidence of independent crimes directed at police officers as a reaction to an illegal arrest or search, the evidence of the gun is admissible. *Id.*, citing *Daniels*, 186 Mich App at 82.

Further, defendant was never detained for purposes of conducting a *Terry* stop. An investigatory *Terry* stop requires that a person be detained. *Barbarich*, 291 Mich App at 473. An investigatory *Terry* stop constitutes a seizure. *Id.* A seizure occurs when a reasonable person would believe that he was not free to leave. *Jenkins*, 472 Mich at 32-33, citing *People v Mamon*, 435 Mich 1, 11; 457 NW2d 623 (1990). To constitute a seizure, there must be the application of physical force, or the submission to a police officer's show of authority. *People v Lewis*, 199 Mich App 556, 559; 502 NW2d 363 (1993), citing *California v Hodari D*, 499 US 621; 111 S Ct 1547; 113 L Ed 2d 690 (1991).

As mentioned above, the police announced their presence and told defendant to drop his gun. Officers Dunning, Dixon, and Gibbings never had an opportunity to detain defendant for further investigation because as soon as the police officers told defendant to drop the weapon, defendant pointed the gun at the police officers. Thus, defendant was never detained for purposes of a *Terry* stop and no unreasonable seizure occurred.

Additionally, defendant did not submit to police authority and there was no application of force. Officers Dunning, Dixon, and Gibbings asserted police authority by identifying themselves as police officers and telling defendant to drop his gun. Defendant did not submit to the police authority, possibly due to his limited English proficiency, and raised his arm and pointed his gun at the police officers. The police officers did not use physical force before defendant raised his arm and pointed the gun at the police officers. Given that defendant did not submit to the police officers' authority and physical force was not used at that time, no seizure occurred.

A seizure did occur when the police officers shot defendant, since the police officers used physical force. At that point the officers had probable cause to believe a crime, defendant's aiming a weapon at them, had been committed. Since the seizure of defendant at that point was supported by probable cause, any evidence seized pursuant to that lawful seizure is admissible. *Corr*, 287 Mich App at 509-510 (holding that, pursuant to a lawful arrest based on probable cause, any evidence seized is admissible). Because no unreasonable seizure occurred, the exclusionary rule does not bar the admission of evidence of the gun at trial.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Stephen L. Borrello

/s/ Kurtis T. Wilder

/s/ Cynthia Diane Stephens