

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMAL NABIL WHITE,

Defendant-Appellant.

UNPUBLISHED

May 13, 1997

No. 187205

Saginaw Circuit Court

LC No. 94-9649 FH

Before: Corrigan, C.J., and Young and M. J. Talbot*, JJ.

MEMORANDUM.

From his conviction of possession of a short-barreled shotgun and receiving and concealing stolen property, defendant appeals by right, alleging error in denial of his motion to suppress evidence on the basis of an allegedly unconstitutional search and seizure.

This Court reviews a trial court's findings of historical fact on Fourth Amendment challenges for clear error. *People v Burrell*, 417 Mich 439, 448; 339 NW2d 403 (1983). On that issue, defendant bore the burden of proof. *People v Lombardo*, 216 Mich App 500, 504-505; 549 NW2d 596 (1996). As the witnesses gave conflicting testimony, the trial court had the superior opportunity to observe their demeanor while testifying entitles its credibility evaluation to deference. The finding that defendant was not living at 574 Meadowlawn, and thus had no reasonable expectation of privacy therein, is not clearly erroneous. Defendant thus lacks standing to litigate a search and seizure issue. *People v Dalton*, 155 Mich App 591, 596; 400 NW2d 689 (1986).

The trial court's alternative ruling, that exigent circumstances also justified Officer Kellett's entry into the Bargouthy home, furnishes a separate and independent basis for affirmance of the convictions. That ruling is one of law to be reviewed by this Court *de novo*. *Ornelas v United States*, 517 US ____; 116 S Ct 1657; 134 L Ed 2d 911, 919 ff (1996).

Here, Officer Kellett's investigation began with what, for Fourth Amendment purposes, is a presumptively reliable report by a citizen informant that shots had been fired in a residential

* Circuit judge, sitting on the Court of Appeals by assignment.

neighborhood. *People v Armendarez*, 188 Mich App 61, 68; 468 NW2d 893 (1991). The officer then confirmed the report by himself hearing a gunshot from somewhere in the 500 block of Meadowlawn. As he proceeded to that location, he observed four men who fled at the approach of a police officer. Although flight at the approach of police does not, by itself, support a reasonable suspicion to warrant an investigative stop, it is a significant factor to be considered in determining whether there were grounds to conclude that criminal activity was afoot. *People v Parr*, 197 Mich App 41, 43; 494 NW2d 768 (1992). Under the totality of the circumstances, Officer Kellett had probable cause to believe that those who were pursued into the 574 Meadowlawn address were involved in criminal activity, and exigent circumstances justified this hot pursuit of possibly armed criminals. *In re Forfeiture of \$176,598.00*, 443 Mich 261, 269-270; 505 NW2d 201 (1993). Thereafter, probable cause to arrest existed when defendant was seen standing near a short-barreled shotgun, and a search of defendant's person was incident to arrest and the ammunition and other evidence thereby obtained was also admissible.

Affirmed.

/s/ Maura D. Corrigan
/s/ Robert P. Young, Jr.
/s/ Michael J. Talbot