

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT BOXX,

Defendant-Appellant.

UNPUBLISHED
October 23, 1998

No. 204710
Recorder's Court
LC No. 96-008574 FY

Before: Hoekstra, P.J., and Cavanagh and O'Connell, JJ.

PER CURIAM.

Defendant was charged with possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Following a bench trial, defendant was convicted of the cocaine offense, and of carrying a concealed weapon, MCL 750.227; MSA 28.424.¹ Defendant was sentenced to lifetime probation for the cocaine conviction, and to two years' probation for the weapons conviction. Defendant subsequently violated the terms of his probation and was sentenced to a term of one to twenty years' imprisonment for the cocaine conviction, and to eight days, with credit for time served, for the weapons conviction. Defendant appeals as of right. We affirm.

Defendant contends the trial court erred in denying his motion to suppress evidence, arguing that his conviction was the product of an illegal arrest made without probable cause. We disagree. The denial of a motion to suppress evidence will not be reversed on appeal in the absence of clear error. "A decision is clearly erroneous if, although there is evidence to support it, the Court is left with a definite and firm conviction that a mistake has been made." *People v Shields*, 200 Mich App 554, 556; 504 NW2d 711 (1993).

This Court, in *People v Peebles*, 216 Mich App 661; 550 NW2d 589 (1996), delineated the standards to be applied to investigatory stops:

The Fourth Amendment of the United States Constitution and Const 1963, art I, § 11 grant individuals the right to be secure against unreasonable searches and seizures. It is well established that brief investigative stops short of arrest are permitted

where police officers have a reasonable suspicion of ongoing criminal activity. The criteria for a constitutionally valid investigative stop are that the police have a particularized suspicion, based on an objective observation, that the person stopped has been, is, or is about to be engaged in criminal wrongdoing. The totality of the circumstances are to be considered to assess the police officer's suspicion that criminal activity is afoot. [*Id.* at 664-665 (internal quotation marks and citations omitted).]

The factual circumstances in the case at bar are similar to those in *Shields, supra*. In *Shields*, the arresting officer received a radio call that narcotics were being sold in front of an apartment building. The officer proceeded to that location and noticed several people in the area, plus a car parked across the street that was blocking a portion of the sidewalk where there was no driveway. As the officer approached, the driver attempted to back up, but the path was blocked by the officer's patrol car. The officer asked to see the driver's license, which the driver was unable to produce. The officer ordered the driver out of the vehicle, intending to arrest him for driving without a license. As the defendant got out of the car, the officer noticed a plastic bag containing a white substance on the driver's seat. *Shields, supra*, at 555-556. This Court rejected the defendant's challenge to the admission of that evidence:

We conclude that the investigatory stop in this case was reasonable and was not merely a pretext for a search for evidence of a crime. Officer Paul, responding to a police radio report that drugs were being sold in front of 600 Pingree, observed a car driven by defendant illegally parked across the street from that address. Additionally, consistent with the report of drug activity, the officer observed several people grouped in the area. Furthermore, testimony indicates defendant attempted to back his car into the street at the time the police car approached. While flight at the approach of the police, by itself, does not support a reasonable suspicion to support an investigative stop, it is a factor to be weighed in the consideration of the totality of the circumstances. On the basis of the totality of the circumstances in this case, we conclude that the stop of defendant's vehicle was supported by the necessary reasonable suspicion. [*Shields, supra* at 557-558 (citations omitted).]

The police officer in *Shields* acted pursuant to information of a narcotics sale at a specific location, then, despite having no description of the individuals involved, investigated the defendant on the basis of the location of the vehicle and the defendant's subsequent flight. In the case at bar, police responded to information that three black males were selling narcotics at Cherrylawn and Eight Mile, and discovered three black males, including defendant, in that vicinity. The officers arrived within a short time of receipt of the radio run, found the suspects four or five blocks from the location of the crime, and found no one else in that area. A police bulletin advising officers of the commission of a felony and providing a description of the perpetrators can provide probable cause for a warrantless arrest of persons matching the description who are found along a possible escape route shortly after the crime. *People v Coward*, 111 Mich App 55, 61; 315 NW2d 144 (1981). Accordingly, in light of the totality of the circumstances in this instance, the investigatory stop of defendant was proper.

Further, police testified that defendant was patted down for safety reasons. “On the basis of a reasonable suspicion of criminal activity and reasonable fear for the safety of himself and others, a police officer may pat down an individual for the limited purpose of discovering weapons.” *People v McCrady*, 213 Mich App 474, 482; 540 NW2d 718 (1995). That initial search led to the discovery of a gun, as a consequence of which defendant was arrested, attendant to which a further search was properly conducted. See *id.* at 483. Because all the searches of defendant were proper, the cocaine that was discovered was properly seized and used as evidence against him.

Finally, defendant asserts that the information provided through the radio run did not carry sufficient indicia of reliability to support the police officers’ actions. Review of the lower court file reveals that a discovery order was entered requiring the prosecution to present the police run tape at court expense to defendant. Despite that order, however, defendant did not inquire at trial as to the source of the information provided to police. We need not address this newly raised issue because there is no record upon which an evaluation can be made. *People v Martin*, 199 Mich App 124, 126; 501 NW2d 198 (1993).

Affirmed.

/s/ Joel P. Hoekstra

/s/ Mark J. Cavanagh

/s/ Peter D. O’Connell

¹ The concealed weapons charge was added during the course of trial.