

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

TERRY LAVOSA MITCHELL,

Defendant-Appellee.

UNPUBLISHED
October 30, 1998

No. 210133
St. Clair Circuit Court
LC No. 97-003408 FH

Before: Markey, P.J., and Sawyer and Whitbeck, JJ.

PER CURIAM.

Plaintiff appeals from the trial court's decision to suppress evidence seized from defendant's automobile following an investigatory stop and to dismiss a charge of possession of less than twenty-five grams of cocaine. We reverse.

Defendant does not contest the consent basis of the search at issue here. Rather, defendant argues that the initial stop itself was improper, therefore tainting the subsequent consent and search. The prosecutor argues that this was a proper stop under *Terry v Ohio*, 392 US 1; 85 S Ct 1868; 20 L Ed 2d 889 (1968), and, therefore, the subsequent search of the automobile pursuant to defendant's consent was valid. We agree with the prosecutor.

The Michigan Supreme Court in *People v Whalen*, 390 Mich 672, 682; 213 NW2d 116 (1973), recognized that the *Terry* doctrine applies to traffic stops and set forth the factors to be considered:

1. Reasonableness is the test that is to be applied for both the stop of, and the search of moving motor vehicles.
2. Said reasonableness will be determined from the facts and circumstances of each case.
3. Fewer foundation facts are necessary to support a finding of reasonableness when moving vehicles are involved, than if a house or a home were involved.

4. A stop of a motor vehicle for investigatory purposes may be based upon fewer facts than those necessary to support a finding of reasonableness where both a stop and a search is [sic] conducted by the police.

The *Whalen* Court, *supra*, justified the investigatory stop in that case based upon the following facts:

The car fit the general description given the police of the getaway vehicle. The driver was dark complected and wearing a tan jacket, also fitting the description. The car was stopped shortly after the robbery had occurred, on a highway frequently used by criminals in that area for purposes of fleeing to another state.

In addition to *Whalen*, plaintiff relies upon the Supreme Court's decision in *People v Nelson*, 443 Mich 626; 505 NW2d 266 (1993). Like the case at bar, *Nelson* involved an investigatory stop of an automobile in connection with drug trafficking. The stop was justified upon the following facts: The police had received information that drugs were being sold out of a particular house. A controlled buy was made at that house, resulting also in information that more drugs could be purchased from Nelson on the south side of town. Defendants were observed driving up to that house, the three individuals in the car entered the house, stayed for only four minutes, then left. An experienced police officer testified that the conduct was consistent with a "crack-house buy" and was similar to activity observed when the house was under surveillance two weeks earlier. A few moments after the defendants left the house, the police stopped their vehicle to investigate the possible drug transaction. See *id.* at 628-630. The Supreme Court held that these facts gave rise to a reasonable suspicion that the defendants had engaged in drug trafficking and, therefore, the police were justified in stopping the vehicle. *Id.* at 638-639.

Defendant, on the other hand, looks to the Supreme Court's decision in *People v LoCicero (After Remand)*, 453 Mich 496; 556 NW2d 498 (1996), wherein the Court concluded that the officers did not have reasonable suspicion to justify stopping an automobile. In *LoCicero*, undercover officers observed the defendants' vehicle (a Trans Am) driving in a Holiday Inn parking lot, driving towards a vehicle (a Ford) in the back lot of the hotel, where the two vehicles met for a moment and then drove off and out of the parking lot, with the Ford vehicle in the lead. Both vehicles entered a parking lot less than a mile away from the Holiday Inn and parked in that lot (separated by three unoccupied parked vehicles). One of the defendants, Mueller, entered the Ford, while the other, LoCicero, got out, looked around, and remained outside at the driver's door of the Trans Am. The conversation in the Ford lasted two or three minutes and the officer did not see anything exchanged between the two. The Ford then pulled out of its parking spot, dropping Mueller at the Trans Am. Both vehicles left the parking lot, with the police stopping the Trans Am approximately five miles away on an expressway. See *id.* at 498-500.

The *LoCicero* Court concluded that, while the police had a hunch that might have warranted further surveillance and investigation, they did not have reasonable suspicion to justify the stop. *Id.* at 505-508. The Court emphasized the fact that the officer did not articulate any basis for a suspicion, merely stating conclusions that the activity looked like a drug transaction, without linking that activity to previous training or experience that gave rise to such a conclusion. Nor did the officer establish why the

surveillance was conducted in the first place. *Id.* at 505-506. That is, the Court noted that there was no indication from the record that the officers had any prior experience with the defendants, that the location was known as a high crime area or known scene of drug activity, that the defendants engaged in furtive gestures, nor were there any tips concerning the defendants' activities. *Id.* at 506.¹

We believe that the facts in this case are more akin to *Nelson* than to *LoCicero*. First, defendant was known to the police officer, who had received information from informants over a period of time linking defendant to drug transactions. Specifically, the officer had received information from three different informants that defendant was engaged in drug trafficking, each informant giving information regarding defendant on more than one occasion, with one of them actually observing defendant make a drug transaction. The officer established the informants' credibility based upon his past dealings with them in other cases, that they knew defendant's street name, their ability to describe defendant's automobile, and that defendant's trafficking was in the area in which the officer eventually made contact with defendant. Additionally, the officer received information from a witness who stated that he had purchased cocaine from the defendant. Further, the area in which defendant was observed was a known high-drug trafficking area. Moreover, before the stop was made, the officer observed defendant make contact with an individual, who got out of his vehicle and entered defendant's vehicle, with the officer testifying that the conduct was, based upon his training and experience, indicative of a drug transaction.

Based upon these facts, we are satisfied that *Nelson* and not *LoCicero* is controlling here. Accordingly, we conclude that the trial court erred in determining that the stop was invalid and, therefore, tainted the subsequent search.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane E. Markey

/s/ David H. Sawyer

/s/ William C. Whitbeck

¹ However, the Court noted that "although there was evidence of an alleged tip, no information gained from it was produced at the preliminary examination." *Id.* at 507 n 19.