STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 6, 1999
v	No. 202754 St. Clair Circuit Court
MICHAEL JOSEPH BELKIEWICZ, Defendant-Appellant.	LC No. 96-003284 FH

Before: Jansen, P.J., and Holbrook, Jr., and MacKenzie, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction for possession of a controlled substance (methamphetamine), MCL 333.7403(2)(b); MSA 14.15(7403)(2)(b). Having found defendant to be a fourth-offense habitual offender, MCL 769.12; MSA 28.1084, the trial court sentenced defendant to an enhanced prison term of two to fifteen years. We affirm.

I. Basic Facts

At approximately 2:20 a.m. on April 8, 1996, defendant was approached by Port Huron Police Officer Brian Georgia after defendant had pulled his brown Chevy Suburban into a residential driveway. Officer Georgia parked his patrol car in the driveway just behind defendant's vehicle, thereby restricting defendant's ability to leave the scene. Just three days earlier, the Port Huron police had investigated a complaint of malicious destruction at this residence. Officer Georgia testified that the police had been told that the residence's porch had been severely damaged when it was run into by a truck. A day or two after the complaint was lodged, an arrest warrant was issued for James Chivers, who allegedly lived at that residence.

Officer Georgia testified that he approached defendant because he suspected that the Suburban might have been the vehicle that had damaged the porch, and because he wanted to see if defendant was Chivers. A subsequent inquiry through the Law Enforcement Information Network (LEIN) uncovered an outstanding warrant for defendant's arrest.[1] Defendant was placed under arrest by Officer Georgia and transported to the St. Clair County Jail. The methamphetamine was found on defendant's person during a search at the jail.

II. The Validity of the Investigatory Stop

Defendant first argues that because the discovery of the methamphetamine was the result of an unconstitutional search and seizure, the trial court erred when it denied his motion to suppress that evidence. Defendant's challenge is focused on both the legitimacy and the intrusiveness of the investigatory stop. We review de novo the trial court's interpretation of the applicable constitutional law and its ultimate decision on the motion to suppress. *People v Zahn*, ___ Mich App ___; ___ NW2d ___ (Docket No. 209176, issued 3/12/99), slip op pp 2-3; *People v Darwich*, 226 Mich App 635, 637; 575 NW2d 44 (1997). The trial court's factual findings are reviewed for clear error. *People v Burrell*, 417 Mich 439, 448; 339 NW2d 403 (1983); *People v Bloxson*, 205 Mich App 236, 239; 517 NW2d 563 (1994). "Clear error exists when the reviewing court is left with a definite and firm conviction that a mistake has been made." *People Kurylczyk*, 443 Mich 289, 303; 505 NW2d 528 (1993).

A. Reasonable suspicion

The Fourth Amendment to the United States Constitution guarantees "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures." US Const, Am IV.[2] Under a line of cases originating with *Terry v Ohio* 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968), the United States Supreme Court "has held that, consistent with the Fourth Amendment, police may stop persons in the absence of probable cause under limited circumstances." *United States v Hensley*, 469 US 221, 226; 105 S Ct 675; 83 L Ed 2d 604 (1985). Accord *United States v Cortez*, 449 US 411, 417-418; 101 S Ct 690; 66 L Ed 2d 621 (1981); *Adams v Williams*, 407 US 143, 145; 92 S Ct 1921; 32 L Ed 2d 612 (1972). One such set of circumstances is where the police stop a person suspected of having been involved in an already completed felony. *Hensley, supra* at 229. "[I]f police have a reasonable suspicion, grounded in specific and articulable facts, that a person they encounter was involved in or is wanted in connection with a completed felony, then a *Terry* stop may be made to investigate that suspicion." *Id.* The totality of the attendant circumstances is to be considered when evaluating the reasonableness of that suspicion. *Cortez, supra* at 418.

In light of the totality of the circumstances existing at the time, we conclude that Officer Georgia had a reasonable suspicion, based on specific and articulable grounds, to stop and interrogate defendant. The record indicates that the description the police had of Chivers was limited. The police knew that Chivers was a white male who purportedly lived at the scene where the malicious destruction of property occurred. When Officer Georgia encountered defendant, also a white male, defendant had just pulled his vehicle into the driveway of this same residence. Given the time of night when defendant pulled into the driveway, it would be reasonable to conclude that he might live at the residence. The police also had evidence that the damage to the property had been caused by a truck. That night, defendant was driving a Chevy Suburban. Under these circumstances, it would be reasonable for Officer Georgia to conclude that the white male in the Suburban was Chivers. Thus, Officer Georgia was justified in stopping defendant in order to determine if he was indeed Chivers. See *Hensley, supra* at 234 (observing that when an officer suspects that an individual was involved in a completed felony, "[a] brief stop and detention at the earliest opportunity after the suspicion arose is fully consistent with the principles of the Fourth Amendment").

B. Scope

We now turn to an examination of the permissible scope of this investigatory stop. Specifically, we are presented with the question of whether a police officer is justified in conducting a LEIN check during the course of an investigatory stop focused on checking the identity of an individual suspected of being involved in a recently completed felony.[3] We conclude that performing a LEIN check under such circumstances is legitimately within the scope of such an investigatory stop.

Initially, we note that under MCL 257.311; MSA 9.2011, a police officer has the authority to demand that a driver of a motor vehicle display his or her driver's license during the course of an investigatory stop.[4] The authority to demand to see a driver's license would be all but meaningless if the officer could not check the validity and status of the license by running a LEIN check. *State v Ellenbecker*, 464 NW2d 427, 430 (Wis App, 1990). Furthermore, we believe that in any legitimate investigatory stop,[5] the intrusion a LEIN check imposes on an individual's privacy interest is outweighed by the public interest promoted by allowing the officer "to identify, with certainty, the person with whom he is dealing." *State v Godwin*, 826 P2d 452, 456 (Idaho, 1992). Running a LEIN check is a minimally intrusive (both in duration and means employed) method of making an accurate identification.

If running a LEIN check is reasonable when the stop is not predicated on identifying the person being detained, then such a check is certainly reasonable when the very issue being investigated is identity. Allowing the police to check an individual's identification would mean little if the police were required to accept the individual's assertions of identity at face value. For example, the name given may be an alias for the suspected perpetrator, or the driver's license produced as proof of identify might be a forgery. Both of these possibilities can be checked by accessing the LEIN. We conclude, therefore, that accessing the LEIN in circumstances such as these is in keeping with the purpose which justifies this exception to the probable cause requirement. See *People v Royer*, 460 US 491, 500; 103 S Ct 1319; 75 L Ed 2d 229 (1983).

Having concluded that in these circumstances a police officer is justified in conducting a LEIN inquiry, we believe it would be unreasonable to ask the officer to turn a blind eye to any outstanding warrants identified during the inquiry. A momentary check for warrants during the course of a justifiable LEIN inquiry does not somehow transform the intrusion from being reasonable to being unreasonable. Indeed, the minimal intrusion on a person's Fourth Amendment privacy interests caused by checking for any outstanding warrants is decidedly outweighed by the public's significant interest in finding and placing in custody at the earliest opportunity an individual named in an outstanding warrant, as well as in seeing that felonies are solved as promptly as possible. *Hensley, supra* at 229 ("[W]here police have been unable to locate a person suspected of involvement in a past crime, the ability to briefly stop that person, ask questions, or check identity . . . promotes the strong government interest in solving crimes and bringing offenders to justice."); *Williams, supra* at 146 ("A brief stop of a suspicious individual, in order to determine his identity . . . may be the most reasonable in light of the facts known to the officer at the time."). Accordingly, we affirm the trial court's denial of defendant's motion to suppress.

II. Prosecutorial Misconduct

Defendant also argues that certain comments made by the prosecutor during his closing argument had the effect of denying defendant a fair and impartial trial.[6] Defendant's failure to object to the challenged remarks at trial means that our review of the issue is precluded unless "a curative instruction could not have eliminated the prejudicial effect or where failure to consider the issue would result in a miscarriage of justice." *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994).

After reviewing the challenged comments in context, *People v Bahoda*, 448 Mich 261, 285-286; 531 NW2d 659 (1995), we see no error requiring reversal. While it may have been somewhat imprudent to state, in essence, that defendant's guilt was "obvious" to the prosecutor, we do not believe that this singular comment encouraged the jury to suspend its independent power of judgment. *People v Truong*, 218 Mich App 325, 340; 553 NW2d 692 (1996). Moreover, the trial court's instruction that the lawyer's statements and arguments are not evidence effectively eliminated any potential prejudice. *Bahoda, supra* at 281.

Affirmed.

/s/ Kathleen Jansen
/s/ Donald E. Holbrook, Jr.
/s/ Barbara B. MacKenzie

[1] The record is somewhat unclear on this point, but it appears that the warrant was related to unpaid child support.

[2] Michigan's counterpart is found at Const 1963, art 1, § 11: "The person . . . of every person shall be secure from unreasonable searches and seizures." Although defendant's constitutional challenge is limited to the Fourth Amendment, our analysis of the issue is equally applicable under the Michigan provision.

[3] Although there is no indication in the record, we believe it is reasonable to conclude that the amount of damage caused by a truck running into a porch would be in excess of $100, thereby making the crime a felony. MCL 750.377a; MSA 28.609(1).

[4] MCL 257.311; MSA 9.2011 reads:

> The licensee shall have his or her operator's . . . license, or the receipt described in [MCL 257.311a; MSA 9.2011(1)], in his or her immediate possession at all times when operating a motor vehicle, and shall display the same upon demand of any police officer, who shall identify himself or herself as such.

[5] This argument presupposes the lawfulness of the investigatoy stop at issue. Our analysis and the conclusions we reach would not be applicable in those situations where the stop was random (i.e., not based on a particularized suspicion). See *Delaware v Prouse*, 440 US 648, 663; 99 S Ct 1391; 59 L

Ed 2d 660 (1979) ("[W]e hold that except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver in order to check his driver's license . . . are unreasonable under the Fourth Amendment.").

[6] The challenged comments are:

> It's so obvious that at times I find that it's difficult to even argue this case. But it's so much in front of me that I don't want to make too light of the facts here because if you handle them too lightly because it seems so obvious to me, but I feel at this point I have to go into it based on the Defendant's testimony a bit more.