

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

KENNETH WILLIAMS,

Defendant-Appellee.

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UNPUBLISHED

June 1, 1999

No. 211537

Wayne Circuit Court

Criminal Division

LC No. 98-001257

Before: Griffin, P.J., and Cavanagh and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals of right from the trial court order granting defendant's motion to suppress evidence and dismissing the case. We reverse and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v). He moved to suppress the evidence on the ground that it was seized as the result of an illegal search. The trial court held an evidentiary hearing. The evidence showed that police officers received a radio transmission that a black male wearing a black jacket with a white stripe had discarded a gun behind a restaurant after the officers had driven past his location. No information indicated that defendant had been displaying the gun before discarding it. Upon arriving at the specified location, the officers observed defendant, who matched the description provided, sitting in a bus shelter in front of the restaurant. After asking other persons in the shelter to leave, the officers advised defendant of the information they had received, and stated that they needed to pat him down to search for a weapon. A struggle ensued, and defendant struck one of the officers. After defendant was restrained, he was arrested for assaulting a police officer. A search incident to that arrest revealed cocaine on defendant's person. The trial court granted defendant's motion to suppress the evidence. The court found that an uncorroborated, anonymous tip that a person had discarded a weapon was not a sufficient basis for making contact with the person without first ascertaining that a weapon had been discarded.

We review a trial court's findings of fact regarding a motion to suppress for clear error, and the ultimate decision de novo. *People v Darwich*, 226 Mich App 635, 637; 575 NW2d 44 (1997).

An investigatory stop must be founded on a particularized suspicion, based on an objective observation of the totality of the circumstances, that the person stopped has been, is, or is about to be involved in criminal activity. *People v Shabaz*, 424 Mich 42, 54; 378 NW2d 451 (1985). On the basis of a reasonable suspicion of criminal activity and a reasonable fear for his safety and the safety of others, an officer may conduct a patdown search of the individual for the purpose of discovering a weapon. *Terry v Ohio*, 392 US 1, 27; 88 S Ct 1868; 20 L Ed 2d 889 (1968); *People v Muro*, 197 Mich App 745, 747; 496 NW2d 401 (1993).

Plaintiff argues that the trial court erred by granting defendant's motion to suppress the evidence and dismissing the case. We agree, reverse the trial court's decision, and remand for reinstatement of the original charge. Upon observing defendant, who matched the description provided, sitting near the restaurant less than ten minutes after the radio transmission was received, the officers' suspicion that defendant likely had been recently involved in criminal activity, that is, carrying a concealed weapon, contrary to MCL 750.227; MSA 28.424, was reasonable. That reasonable suspicion was properly based on information received from other officers. See *People v Chambers*, 195 Mich App 118, 122; 489 NW2d 168 (1992). The trial court erred in holding that the officers did not have the requisite reasonable suspicion to make the initial stop because they did not search the area for a gun before approaching defendant at the shelter. The fact that the officers had received information that a person had discarded a weapon did not mandate a conclusion on their part that the person was now completely unarmed. See *People v McCrady*, 213 Mich App 474, 482; 540 NW2d 718 (1995). Under the totality of the circumstances, the intrusion was warranted. *Terry*, *supra* at 21.

The search which revealed the cocaine was conducted incident to defendant's arrest for assaulting a police officer. Because the officers had probable cause to arrest defendant, the search was proper. *McCrady*, *supra* at 483.

The trial court's order granting defendant's motion to suppress is reversed, and this case is remanded to the trial court for reinstatement of the original charge. We do not retain jurisdiction.

/s/ Richard Allen Griffin

/s/ Mark J. Cavanagh

/s/ E. Thomas Fitzgerald