

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ONE 1990 FORD,

Defendant,

and

JAMES SCOTT-GORMAN CONKRIGHT,

Claimant-Appellee.

UNPUBLISHED

July 13, 2001

No. 221548

Wayne Circuit Court

LC No. 99-990636-CF

Before: Saad, P.J., and Holbrook, Jr., and Murphy, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting claimant's motion for a directed verdict. We affirm.

Plaintiff filed this action seeking forfeiture of claimant's truck pursuant to MCL 333.7521(1), asserting that it was used in connection with a drug transaction. At the close of the proofs, claimant moved for a directed verdict, challenging the constitutionality of the stop that led to seizure of the vehicle. The court treated the motion as one to suppress the evidence and granted it. The trial court's factual findings are reviewed for clear error but its ultimate decision regarding suppression is reviewed de novo. *People v Garvin*, 235 Mich App 90, 96; 597 NW2d 194 (1999).

The brief detention of a person following an investigatory stop is considered a reasonable seizure if the officer has a 'reasonably articulable suspicion' that the person is engaging in criminal activity. The reasonableness of an officer's suspicion is determined case by case on the basis of the totality of all the facts and circumstances. '[I]n determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or "hunch," but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience.'

Although this Court has indicated that fewer facts are needed to establish reasonable suspicion when a person is in a moving vehicle than in a house, some minimum threshold of reasonable suspicion must be established to justify an investigatory stop whether a person is in a vehicle or on the street. [*People v LoCicero (After Remand)*, 453 Mich 496, 501-502; 556 NW2d 498 (1996) (footnotes omitted).]

Being in a high crime area is, in itself, insufficient to meet the required level of suspicion. *People v Nelson*, 443 Mich 626, 636; 505 NW2d 266 (1993). Being in a high crime area and leaving a building known for criminal activity is insufficient to establish grounds for an investigatory stop. *People v Shabaz*, 424 Mich 42, 60-61; 378 NW2d 451 (1985). However, a person's exit from a known drug house or his presence in an area known for narcotics trafficking, coupled with his unprovoked flight upon noticing the police, is sufficient. *Illinois v Wardlow*, 528 US 119; 120 S Ct 673; 145 L Ed 2d 570, 576 (2000); *State v Dickerson*, 481 NW2d 840, 843 (Minn, 1992), aff'd on other grounds 508 US 366; 113 S Ct 2130; 124 L Ed 2d 334 (1993). Similarly, a person's momentary visit to a house where the occupant is known to be selling drugs and awaiting a new supply, coupled with evidence that quick visits are characteristic of known drug transactions that occurred at the same location, is sufficient. *Nelson, supra*, 637-639.

In this case, the officers knew from experience that claimant's passenger was a drug user, that she was in a vehicle stopped outside a known drug house, and that curbside drug deals could occur in a matter of seconds. They had no prior information that claimant and/or his passenger had gone there for a drug deal, they did not see either individual entering or leaving the drug house, and did not see any known drug dealers approaching or walking away from the truck. There was no evidence that claimant tried to flee the officers or that he or his passenger engaged in any furtive gestures upon seeing them approach. Therefore, while the passenger's presence in the area might justify a hunch that she was there to buy drugs, there was nothing to suggest from her and claimant's mere presence that they had been, or were about to be, engaged in criminal activity. *LoCicero, supra*, 505-508. Therefore, the trial court did not err in ruling that the stop was unconstitutional and in ordering the evidence suppressed.

The prosecutor next contends that the police had probable cause to believe the truck was contraband and thus could seize it without a warrant. The prosecutor did not raise this issue below and thus the issue has not been preserved for appeal. *People v Hogan*, 225 Mich App 431, 438; 571 NW2d 737 (1997). In any event, the police did not have probable cause to believe the truck was contraband based on their observation of the passenger's purchase of narcotics on a previous occasion because there was no evidence that the truck was used or connected to that transaction. *Florida v White*, 526 US 559; 119 S Ct 1555; 143 L Ed 2d 748, 754-755 (1999).

Affirmed.

/s/ Henry William Saad
/s/ Donald E. Holbrook, Jr.
/s/ William B. Murphy