

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

LINZIE B. CARSON,

Defendant-Appellee.

UNPUBLISHED

January 22, 2002

No. 232873

Wayne Circuit Court

LC No. 00-011439

Before: Talbot, P.J., and Smolenski and Wilder, JJ.

PER CURIAM.

Defendant was charged with possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v). The prosecution appeals as of right the trial court's orders granting defendant's motions to suppress evidence and to dismiss the case. We reverse and remand.

I. Facts and Proceedings

Defendant's possession charge arose out of his encounter with Officers Brandon Cole and Christopher Herndon of the Detroit Police Department on September 22, 2000. Testimony at the evidentiary hearing established that on that date, between 10:30 p.m. and 11:00 p.m., the police officers observed defendant walking westbound in the middle of Findlay Street, even though there were sidewalks present on both sides of the street, in violation of Detroit City Code § 55-12-4 and MCL 257.655.¹ The officers were in a marked police car traveling westbound on

¹ Detroit City Code § 55-12-4 provides, in part:

Where sidewalks are provided, it shall be unlawful for pedestrians to walk upon the main traveled portion of the highway.

Similarly, MCL 257.655(1) provides, in part:

Where sidewalks are provided, a pedestrian shall not walk upon the main traveled portion of the highway. Where sidewalks are not provided, pedestrians shall, where practicable, walk on the left side of the highway facing traffic which passes nearest.

Findlay Street, and approximately eighty feet away from defendant, when they made this observation.

According to Officer Cole, his normal procedure in such situations is to approach the individual, investigate why the individual was walking in the middle of the street, and inform the individual to get out of the street so that the individual would not risk getting hit by a car. Officer Cole testified that he had also written tickets for this violation in the past.² Consistent with normal procedure, Officer Herndon stopped the marked police car next to defendant, and Officer Cole exited the car and asked defendant his name. Defendant did not answer but instead took two steps away from Officer Cole, which led Officer Cole to believe that defendant was going to flee. Based on this belief, Officer Cole grabbed defendant and placed him against the police car. Defendant then told Officer Cole his name and Officer Herndon ran the name through the Law Enforcement Information Network (LEIN) database, which indicated that there was an outstanding bench warrant against defendant. Officer Cole arrested and handcuffed defendant because of the warrant. Officer Cole then performed a protective pat-down search of defendant, which resulted in the recovery of a plastic “baggie” containing sixteen smaller zip-lock bags filled with a tan colored, off-white substance, resembling crack cocaine.

After hearing Officer Cole’s testimony, the trial court granted defendant’s motions to suppress the evidence and dismiss the case finding that the initial stop of defendant was “bogus,” “unjustified,” and “unconstitutional” and that the subsequent search “was inappropriate [and] illegal.”

II. Standard of Review

We review a trial court’s factual findings in a suppression hearing for clear error. *People v Oliver*, 464 Mich 184, 191; 627 NW2d 297 (2001) and *People v Stevens (After Remand)*, 460 Mich 626, 631; 597 NW2d 53 (2000). A ruling is clearly erroneous when the reviewing court is firmly convinced that a mistake has been made. *People v Brezenski*, 243 Mich App 431, 433; 622 NW2d 528 (2000). In addition, while the trial court’s factual findings are reviewed for clear error, the constitutional questions relevant to the suppression hearing are questions of law that are reviewed de novo. *People v Sierb*, 456 Mich 519, 522; 581 NW2d 219 (1998), *People v Nelson*, 443 Mich 626, 631 n 7; 505 NW2d 266 (1993). See also *People v Beuschlien*, 245 Mich App 744, 748-749; 630 NW2d 921 (2001).

III. Analysis

On appeal, plaintiff argues (1) that because the officers observed defendant committing a violation, the initial investigatory stop of defendant was justified; (2) that defendant’s arrest was justified; and (3) that the seizure of the cocaine from defendant was justified as a search incident to arrest. We agree.

² At trial, Officer Cole could not recall if defendant had violated a municipal ordinance or state law by walking in the middle of the street; however, as discussed *supra*, defendant was actually in violation of both a municipal ordinance, Detroit City Code § 55-12-4, and a state law, MCL 257.655(1).

Under *Terry v Ohio*, 392 US 1, 21-22; 88 S Ct 1868; 20 L Ed 2d 889 (1968), and its progeny, the police may conduct an investigatory stop without probable cause where they have a reasonable and articulable suspicion that a crime is afoot or has been committed. To be lawful, the stop must be brief, investigatory in nature and must stop short of arrest. *Id.* at 16; *People v Faucett*, 442 Mich 153, 168; 499 NW2d 764 (1993); *People v Christie (On Remand)*, 206 Mich App 304, 308; 520 NWd 647 (1994). Here, defendant was approached after two police officers observed him walking in the middle of street – even though there were sidewalks on each side of the street – in violation of Detroit City Code § 55-12-4 and MCL 257.655. Hence, defendant was observed committing unlawful activity. Thus, the trial court erred when it ruled that the officers did not have reasonable suspicion to stop and detain defendant. See *People v Oliver*, 464 Mich 184, 196, 200; ___ NW2d ___ (2001), *Illinois v Wardlow*, 528 US 119, 124; 120 S Ct 673; 145 L Ed 2d 570 (2000), and *Terry, supra*. See also *People v Nelson*, 443 Mich 626, 636-637; 505 NW2d 266 (1993).

We also conclude that defendant's arrest was proper. In *People v Walker*, 58 Mich App 519, 524; 228 NW2d 443 (1975), this Court held that "[a] LEIN check is an unobstructive investigative tool employed by the police . . . to determine whether there are any outstanding warrants" against the individual being investigated. (Emphasis added.) See also *People v Davis*, ___ Mich App ___; ___ NW2d ___, issued 12/11/01 (Docket No. 220087), slip op, p 6, quoting *Walker, supra*. In the instant case, Officer Cole used the LEIN system in an effort to confirm defendant's given identity. Because the LEIN check indicated that defendant had an outstanding bench warrant for a traffic violation, the officers properly arrested defendant. See MCL 764.15(e) and *Hollis v Baker*, 45 Mich App 666, 669; 207 NW2d 138 (1973). See also *People v Haney*, 192 Mich App 207, 210-211; 480 NW2d 322 (1991).

Finally, since the officers had a reasonable, articulable suspicion to investigate defendant, and made a valid, custodial arrest based on the outstanding warrant, the search that resulted in the seizure of the cocaine from defendant's person was valid as a proper search incident to arrest. As such, no further justification for the search was required, *People v Chapman*, 425 Mich 245, 251; 387 NW2d 835 (1986), quoting *United States v Robinson*, 414 US 218, 235; 94 S Ct 467; 38 L Ed 2d 427 (1973); *People v Eaton*, 241 Mich App 459, 462-463; 617 NW2d 363 (2000), and the cocaine should not have been suppressed.

IV. Conclusion

The trial court erred when it determined that the officers' initial stop of defendant was pretextual, and in concluding that the subsequent search and seizure were improper. The trial court further erred in suppressing evidence of defendant's possession of cocaine and in dismissing the charges against defendant. Accordingly, we reverse and remand this case for trial. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ Michael R. Smolenski
/s/ Kurtis T. Wilder