# STATE OF MICHIGAN

# COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ARSELL WEARY,

Defendant-Appellee.

UNPUBLISHED
January 29, 2002

No. 232607
Wayne Circuit Court
LC No. 00-010158

Before: Cavanagh, P.J., and Neff and B. B. MacKenzie*, JJ.

PER CURIAM.

Defendant, charged with uttering and publishing, MCL 750.249, moved to suppress evidence obtained from a search of his vehicle after he was stopped. The circuit court granted the motion and dismissed the case without prejudice. The prosecution appeals as of right. Specifically, the prosecution argues that the trial court erred in finding that the officers lacked reasonable suspicion to stop defendant's vehicle. We reverse and remand the case for trial.

I.

On August 23, 2000, Officer Michael Arakelian of the Livonia Police Department was the investigating officer of a report that a black female wearing a multi-colored top and an eye patch was attempting to cash a fraudulent check at the Comerica Bank in Livonia. Arakelian testified that he knew, from each of the thirty to forty fraudulent check cases in which he had been involved, that a person attempting to pass bad checks would not work alone. Rather, one person would be in the bank attempting to cash the fraudulent check while another would wait in a car outside. Consequently, he requested additional police assistance.

Sergeant Michael Bremenour responded to Arakelian's request for an unmarked vehicle. Bremenour knew, from prior experience working on twenty to thirty bad check cases, that a second person, or a getaway driver, was usually involved. After his arrival at the location, he noticed that there were several cars in the parking lot, but only a white Lincoln was occupied. The Lincoln was backed into a parking space directly in front of the bank's entrance and the occupant, defendant, was staring at the entrance to the bank. Defendant did not appear to be writing or balancing a checkbook and he did not pick up anyone. Within a minute after

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Bremenour arrived, defendant drove away. After he left, Bremenour observed the female suspect exit the bank, and she was looking around the parking lot.

Sergeant Roger Degen also responded to the scene. Degen knew, from his previous two years of experience working on check fraud cases, that there would be someone waiting outside, serving as a lookout. Consequently, Degen positioned himself one half mile away from the bank and listened for information about any flight from the scene. When he learned that a light colored Lincoln with one occupant left the scene toward southbound Merriman, he proceeded to follow it. The Lincoln turned right on Lyndon from Merriman. It then turned left on southbound Arden. It then turned left on Granada and then back onto southbound Merriman. Arakelian, in the meantime, was on southbound Merriman. When the Lincoln reentered southbound Merriman, Arakelian initiated his emergency lights and stopped it. Defendant was arrested after Arakelian received radio information that the female suspect was arrested for attempting to cash the fraudulent check.

After defendant was placed in the back seat of the police vehicle, Degen searched defendant's vehicle. During the search, and in plain view, he saw paper sticking out of the sunroof above the driver's right shoulder area. He opened the sunroof and recovered numerous pieces of ripped checks that had the same maker, Gordon Grossman Building Company, as was on the check that the woman tried to pass at the bank.

On the basis of the above evidence, the trial court found that the officers did not have reasonable suspicion to stop defendant's car and granted defendant's motion to suppress the evidence.

II.

The question presented is whether the officers had an articulable suspicion under *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968), to conclude that defendant was an accomplice in a fraudulent check crime, and then to follow and stop his vehicle. This Court reviews the trial court's factual findings at a hearing to suppress evidence as improperly seized for clear error. *People v Christie (On Remand)*, 206 Mich App 304, 308; 520 NW2d 647 (1994). Clear error exists where this Court is left with a definite and firm conviction that a mistake has been made. *Id*. Questions of law relevant to the suppression issue are reviewed de novo. *People v Sobczak-Obetts*, 463 Mich 687, 694; 625 NW2d 764 (2001).

The conduct of the officers in this case squarely falls within the investigative stop and search exception as authorized by *Terry* and extended by our Supreme Court to include "investigative stops under various circumstances for what has been called 'special law enforcement needs.'" *People v Nelson*, 443 Mich 626, 631; 505 NW2d 266 (1993), citing *People v Shabaz*, 424 Mich 42, 58, n 6; 378 NW2d 451 (1985). A two-part test set forth in *United States v Cortez*, 449 US 411; 101 S Ct 690; 66 L Ed 2d 621 (1981), must be satisfied to establish that the investigative stop was constitutional. *Nelson*, *supra* at 632. First, "the totality of the circumstances as understood and interpreted by law enforcement officers, not legal scholars, must yield a particular suspicion that the individual being investigated has been, is, or is about to be engaged in criminal activity." *Id*.; see, also, *People v Faucett*, 442 Mich 153, 168; 499 NW2d 764 (1993). Second, the suspicion must be reasonable and articulable. *Nelson*, *supra* citing *Terry*, *supra* at 21. "There is no bright line rule to test whether the suspicion giving rise to

an investigatory stop was reasonable, articulable, and particular." *Nelson, supra* at 635. However, in analyzing the totality of the circumstances, common sense and everyday life experiences predominate over uncompromising standards. *People v Yeoman*, 218 Mich App 406, 410; 554 NW2d 577 (1996). Further, objective facts known to the police officers who effected the stop should be considered in determining whether the stop was justified by reasonable suspicion. *People v Arterberry*, 431 Mich 381, 384; 429 NW2d 574 (1988).

In the instant case, the officers testified to the following undisputed objective facts that they had before defendant was stopped: (1) the officers were responding to a crime in progress inside the bank; (2) the three officers knew from previous experience with fraudulent check crimes that a person in a getaway vehicle usually waited outside the bank; (3) only the Lincoln in the bank parking lot was occupied, the driver of the vehicle (defendant) was staring at the exit doors of the bank, and the driver then drove away; (4) after the vehicle left, the woman attempting to pass the fraudulent check exited the bank and looked around the parking lot, as if she were looking for a ride; and (5) the Lincoln proceeded on southbound Merriman, where it made a series of turns, eventually returning to southbound Merriman.

In their analysis of the totality of the circumstances, law enforcement officers are permitted, if not required, to consider the modes or patterns of operation of criminal behavior, draw inferences, and make deductions accordingly. *Nelson, supra* at 636. Drawing on their extensive years of police experience, individually and combined, the officers in this case concluded that defendant's behavior was consistent with the behavior of one involved in a check fraud scheme. In consideration of the deference accorded law enforcement officers with extensive experience and based on the totality of the circumstances presented, we conclude that the officers had a particular, reasonable, and articulable suspicion that defendant was acting as the lookout or the getaway driver in the check fraud crime that was in progress inside the bank. See *Id*. Therefore, the investigative stop of defendant's vehicle was justified and constitutional. See *People v Bordeau*, 206 Mich App 89, 92-93; 520 NW2d 374 (1994), overruled on other grounds sub nom *People v Edgett*, 220 Mich App 686; 560 NW2d 360 (1996). Accordingly, the trial court clearly erred in granting defendant's motion to suppress the evidence on the basis that the investigative stop was improper. See *People v Rizzo*, 243 Mich App 151, 155; 622 NW2d 319 (2000).

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

/s/ Mark J. Cavanagh
/s/ Janet T. Neff
/s/ Barbara B. MacKenzie