STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE CITY OF WESTLAND,

Plaintiff-Appellant,

v

JOHN THOMAS KIRKEY,

Defendant-Appellee.

UNPUBLISHED
July 26, 2002

No. 239054
Wayne Circuit Court
LC No. 01-500089

Before: Gage, P.J., and Cavanagh and Wilder, JJ.

PER CURIAM.

The City of Westland appeals by leave granted from the circuit court's order dismissing several charges brought against defendant. We reverse.

Defendant was charged with operating a motor vehicle under the influence of intoxicating liquor (OUIL), MCL 257.625(1)(a), having an unlawful blood alcohol level (UBAL), MCL 257.625(1)(b), and driving with a revoked license, MCL 257.904. Defendant filed a motion to suppress evidence of his intoxicated state and to dismiss the complaint and warrant against him on the basis that the police officer who had stopped him lacked reasonable suspicion to do so. Following an evidentiary hearing, the district court denied defendant's motions.

Defendant subsequently pleaded guilty of UBAL, conditioned on his preservation of the right to appeal the propriety of the officer's stop and search.[1] On defendant's appeal to the circuit court, the court reversed the district court and ordered dismissal of the charges against defendant.

The prosecution argues on appeal that the circuit court erred in reversing the district court's decision because a constitutional basis supported the arresting officer's approach of defendant at his residence. In considering a motion to suppress evidence, this Court reviews de novo the trial court's ultimate conclusions of law, but reviews the trial court's factual findings to determine if they are clearly erroneous. *People v Snider*, 239 Mich App 393, 406; 608 NW2d 502 (2000). Factual findings qualify as clearly erroneous if, after reviewing the record, this

[1] The district court sentenced defendant to sixty days in jail and assessed fines and court costs. Defendant posted bond pending appeal.

Court is left with a definite and firm conviction that a mistake was made. *People v Givans*, 227 Mich App 113, 119; 575 NW2d 84 (1997).

Both the United States and the Michigan Constitutions prohibit unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11; *Snider*, *supra*. "A 'seizure' occurs within the meaning of the Fourth Amendment if, in view of all the circumstances surrounding an encounter with the police, a reasonable person would have believed that the person was not free to leave." *People v Shankle*, 227 Mich App 690, 693; 577 NW2d 471 (1998). The taking of blood to determine alcohol content constitutes a search and seizure. *People v Borchard-Ruhland*, 460 Mich 278, 293; 597 NW2d 1 (1999). The reasonableness of a search depends on a balancing of the need to search against the intrusion the search entails. *People v Wallin*, 172 Mich App 748, 750; 432 NW2d 427 (1988). An investigatory stop is reasonable if under the totality of the circumstances, the police officer has a particularized suspicion, based on objective observations, that the person stopped has been, is, or is about to be engaged in criminal activity. *People v Shields*, 200 Mich App 554, 557; 504 NW2d 711 (1993).

City of Westland Police Officer Mark Cholak testified at the evidentiary hearing that he had been dispatched "to sit on" an Alvin Street address because of an anonymous report that a man living there usually drove home from work drunk on Fridays. Cholak observed defendant's pickup, which matched the vehicle description Cholak had received, approach defendant's house and pull into the driveway without incident. Cholak, who was in uniform, parked in the street, and approached defendant in his driveway as defendant exited his pickup. Cholak advised defendant why he was there and indicated that he would like to speak with defendant. Cholak observed that defendant had glassy and red eyes, smelled of intoxicants, and slurred his speech.

We reject defendant's suggestion that Cholak improperly approached him in the driveway. It is not unconstitutional for a police officer, who possesses some information that he believes warrants further investigation, to go to a private residence and engage in conversation with another person. *People v Frohriep*, 247 Mich App 692, 697; 637 NW2d 562 (2001). The mere fact that an officer initiates contact with a citizen on private property does not implicate constitutional protections. *Id*. at 698; *Shankle*, *supra* at 693-694. "It is unreasonable to think that simply because one is at home that they are free from having the police come to their house and initiate a conversation." *Frohriep*, *supra* at 698.

However, the "knock and talk" procedure must comply with general constitutional protections. If an officer initiates the "knock and talk" procedure, the subject must feel free to leave and the consent to search must not be forced when viewed in the context of the circumstances. *Id*. In this case, no indication exists that defendant did not feel free to leave or that Cholak pressured or coerced defendant to speak with him. We note Cholak's testimony that had defendant walked away into his house, Cholak "wouldn't have stopped him." Officer Cholak merely initiated a conversation with defendant, and if defendant was willing to listen or offer voluntary answers, this was not a violation of constitutional protections. *Frohriep*, *supra* at 697-698; see also *People v Shabaz*, 424 Mich 42, 56-57; 378 NW2d 451 (1985) (noting that the police do not violate constitutional rights merely be approaching and speaking with someone in a public place). Thus, Officer Cholak was lawfully in the driveway when he spoke with defendant. Furthermore, (1) Cholak's lawful detections of defendant's red and glassy eyes, odor of intoxicants, and slurred speech, taken together with (2) the apparently accurate anonymous tip the police had received, reasonably led Cholak to believe that defendant, whom Cholak had just

observed driving a vehicle on a public road, had violated MCL 257.625. *People v Levine*, 461 Mich 172, 184-185; 600 NW2d 622 (1999); *People v Ulman*, 244 Mich App 500, 509-510; 625 NW2d 429 (2001). Accordingly, Cholak properly detained defendant for sobriety and Breathalyzer testing, and ultimately for arrest. MCL 764.15(1)(a).

Defendant relies on *Florida v J L*, 529 US 266; 120 S Ct 1375; 146 L Ed 2d 254 (2000), which we find factually distinguishable from the instant case. In *Florida v J L*, an anonymous caller reported to the police that a young black male wearing a plaid shirt was carrying a gun at a particular bus stop. The police arrived at the bus stop and saw a young black male wearing a plaid shirt. The officers had no reason other than the tip to suspect illegal conduct, but searched the man and found a gun in his pocket. *Id*. at 268. The United States Supreme Court held that the anonymous tip alone, which "lacked [even] moderate indicia of reliability," did not constitute reasonable suspicion justifying the police officers' stop and frisk of the suspect. *Id*. at 271, 274. In the instant case, probable cause rested not only on an anonymous tip regarding defendant's weekly drinking and driving, but also on Cholak's own lawful observations of defendant's apparently intoxicated condition while driving.

We conclude that the circuit court erred in granting defendant's motion to suppress and dismissing the charges against defendant on the basis of its erroneous finding that Cholak lacked probable cause to detain defendant.

We reverse and remand for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Hilda R. Gage
/s/ Mark J. Cavanagh
/s/ Kurtis T. Wilder