STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 4, 2004
v	No. 242982 Oakland Circuit Court
TYRONE PHIPPS ROBINSON, Defendant-Appellant.	LC No. 01-182008FC

Before: Smolenski, P.J., and Saad and Kelly, JJ.

PER CURIAM.

Defendant appeals his convictions for armed robbery, MCL 750.529, assault with intent to rob while armed, MCL 750.89, possession of a firearm by a felon, MCL 750.224f, resisting arrest, 750.479, and three counts of possession of a firearm in the commission of a felony, MCL 750.227b. We affirm.

At 1:12 a.m. on December 11, 2001, a black male entered the Mobil gas station on the corner of Greenfield Road and 11 Mile Road in Southfield. The man, who wore a ski mask and carried a revolver, fired a shot into the floor and demanded money. The gas station clerk complied and then called the police after the man fled. In response to a dispatch about the robbery, Southfield Police officers Walter Menzel and Paul Kinal proceeded to the corner of Greenfield and Eight Mile Road. Based on their training, they believed that the robber would likely attempt to flee south into Detroit and Greenfield was the most direct route into the city from the scene of the robbery. Approximately three to five minutes after the robbery, defendant, traveling south on Greenfield, approached the officers' position. The officers trained their spotlights on defendant's minivan and noticed that he fit the description of the robbery suspect. The officers stopped defendant's vehicle and found money and a revolver on the floor under the front seat. The gas station owner later identified some of the money found in defendant's possession and a firearm examiner testified that the bullet fragment found inside the store was fired from the gun taken from defendant's vehicle.

Defendant contends that the trial court erred by denying his motion to suppress the evidence found in his vehicle because the stop and search was not supported by "reasonable suspicion" as defined by our courts. We review a trial court's findings of fact at a suppression hearing for clear error. *People v Oliver*, 464 Mich 184, 191; 627 NW2d 297 (2001). "However, the constitutional questions relevant to the suppression hearing are questions of law that are

reviewed de novo." *People v Custer*, 248 Mich App 552, 559; 640 NW2d 576 (2002). As our Supreme Court explained in *People v Champion*, 452 Mich 92, 98-99; 549 NW2d 849 (1996):

> Police officers may make a valid investigatory stop if they possess "reasonable suspicion" that crime is afoot. *Terry v Ohio*, [392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968)]. Reasonable suspicion entails something more than an inchoate or unparticularized suspicion or "hunch," but less than the level of suspicion required for probable cause. *United States v Sokolow*, 490 US 1; 109 S Ct 1581; 104 L Ed 2d 1 (1989).
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> A valid investigatory stop must be justified at its inception and must be reasonably related in scope to the circumstances that justified interference by the police with a person's security. Justification must be based on an objective manifestation that the person stopped was or was about to be engaged in criminal activity as judged by those versed in the field of law enforcement when viewed under the totality of the circumstances. The detaining officer must have had a particularized and objective basis for the suspicion of criminal activity.

In *People v Yeoman*, 218 Mich App 406, 410; 554 NW2d 577 (1996), this Court explained the standard as follows:

> In analyzing the totality of the circumstances, common sense and everyday life experiences predominate over uncompromising standards, and law enforcement officers are permitted, if not required, to consider the modes or patterns of operation of certain kinds of lawbreakers. [Citing *People v Nelson*, 443 Mich 626, 635-636; 505 NW2d 266 (1993).]

Additionally, when dealing with the search or seizure of a vehicle, "the reasonable and atriculable suspicion must be directed at the vehicle." *Yeoman*, *supra*, 410, citing *People v Bordeau*, 206 Mich App 89, 93; 520 NW2d 374 (1994), overruled on other grounds *People v Edgett*, 220 Mich App 686; 560 NW2d 360 (1997). But a finding of reasonableness requires "fewer foundational facts" when it concerns a motor vehicle rather than a house or a home. *Id.*, citing *People v Christie*, 206 Mich App 304, 308-309; 520 NW2d 647 (1994).

In *People v LoCicero*, 453 Mich 496; 556 NW2d 498 (1996), our Supreme Court suppressed evidence discovered during a stop and search because the arresting officers lacked reasonable suspicion based on the following facts: The officers observed a Trans Am driving through a hotel parking lot. *Id*. at 498. It stopped near a second car and then both vehicles drove off together to a second parking lot a short distance away. *Id*. at 499. They parked in an unlit area separated by a few unoccupied vehicles. *Id.* The passenger of the Trans Am got out and entered the passenger side of the other vehicle, and spoke with its driver for two or three minutes. *Id.* Meanwhile, the driver of the Trans Am walked across the lot, looked around, and then walked back to his vehicle. *Id.* The passenger then returned to the Trans Am and both cars left.

The Court held that "the officers' observations did not give rise to the level of reasonable suspicion" necessary to justify an investigative stop. *LoCicero*, *supra* at 507-508. Specifically, the Court found that the officer failed to "articulate how the behavior that he observed suggested,

in light of his experience and training, an inference of criminal activity." *Id*. at 505-506. The officers had no previous experience with the suspects and did not contend that the incident took place in a high crime area. *Id*. at 506. Also, neither suspect acted "evasively or engaged in furtive gestures upon encountering the police." *Id*. The Court concluded that the factors cited by the officers amounted to a mere hunch that the suspects were engaged in a criminal activity. *Id*. at 502.

In contrast, in *Oliver, supra*, the totality of the circumstances did create reasonable suspicion. The case involved the armed robbery of a bank in Jackson. *Id*. at 187. Deputy Roger Elder responded to a dispatch that two black males committed a robbery and fled on foot. *Id.* Deputy Elder searched for a vehicle and more than two persons because, in his experience, bank robbers usually have a getaway car and at least one additional accomplice. *Id*. at 188. Deputy Elder drove to an apartment complex near the scene of the crime and observed four black males in a car heading out of the parking lot. *Id*. at 188-189. The officer noticed that all four of the cars passengers looked directly ahead. *Id*. at 189. He found this "very unusual" because, in his experience, people always look to see what police officers are doing. *Id.* The car then drove off, taking a circuitous route that prevented them from having to drive past the bank. *Id.* Elder called for backup, stopped the car, and discovered money stolen from the bank. *Id*. at 189-190.

The defendants in *Oliver* challenged the stop on the grounds that Deputy Elder did not have reasonable suspicion to make the stop. *Oliver, supra* at 190. But our Supreme Court held that the officer had reasonable suspicion to make an investigatory stop. *Id*. at 200-201. The Court observed that, although "one or more of [the] factors in isolation may not have constituted reasonable suspicion to stop the car, under the totality of the circumstances, there was reasonable suspicion to justify the traffic stop in this case." *Id*. at 205.

Also, in *Bordeau, supra*, this Court upheld the trial court's order denying the defendant's motion to suppress where the officer testified that:

> [W]ithin a minute of receiving the radio report he was at a location where he would see anyone leaving the scene of the crime in the direction testified to by the witness; that in his experience these types of thieves have a getaway car in the area; that there were no cars on the road other than the one that he stopped to investigate in which defendant was a passenger; and that, in the totality of these circumstances, he had a particular suspicion that the vehicle and its passengers were involved in the reported crime. [*Bordeau, supra* at 92-93.]

This Court concluded that:

> The suspicion which led Sergeant Collins to stop defendant's vehicle was reasonable in the context of the circumstances and the sergeant's experience of twenty-two years. It was particular in that the vehicle was coming from the area of the reported crime, in the direction reported by the witness, and was the only vehicle on the road in that area. [*Id*. at 93.]

Here, we find the totality of the circumstances similar to *Oliver* and *Bordeau*. This case is factually similar to *Bordeau* and, like Deputy Elder in *Oliver*, Officer Menzel received a dispatch that a robbery had been committed and he acted on the basis of his training and

experience. Just as Deputy Elder knew to look for a getaway car, Menzel was trained to watch for suspects escaping south into Detroit. Further, both defendant here and the suspects in *Oliver* matched the descriptions of the robbers in the respective cases. The men arrested in *Oliver* were discovered near the scene of the crime a few minutes after it occurred. Here, Officer Menzel encountered defendant at the intersection of Greenfield and Eight Mile, three to five minutes after the robbery. This was consistent with the amount of time it would take someone to reach that location from the Mobil station.

Unlike the police in *LoCicero*, Officer Menzel articulated how, in light of his experience and training, defendant's behavior created an inference of criminal activity. He testified that, after the robbery, defendant was traveling south on a main road towards Detroit and that, from his training and experience, Officer Menzel believed that criminals were likely to seek the quickest route away from Southfield and into Detroit. Officer Menzel took into account the "patterns of operation of certain kinds of lawbreakers." *Yoeman, supra* at 410. Also, the officer stated that, based on his experiences, defendant behaved in an atypical manner. When Officer Menzel shined his spotlight on defendant, he looked towards the patrol car rather than looking away. And, rather than immediately pulling over, defendant slowed his vehicle and continued to roll along after the officer activated his patrol car's overhead lights. These constitute the kind of "furtive gestures upon encountering the police" and evasive actions not articulated in *LoCicero*.

Based on the totality of the circumstances, we find that the police had a reasonable suspicion to justify the investigative stop. The stop and subsequent search of defendant's vehicle did not violate his rights under the Fourth Amendment. Accordingly, the trial court did not err in denying defendant's motion to suppress the evidence discovered.

Nonetheless, defendant argues that the trial court erred by considering defendant's failure to stop immediately and his uncooperative behavior after stopping as part of the totality of the circumstances because these factors occurred after the officers decided to pull him over. Therefore, defendant argues this conduct cannot justify the stop and search. However, the prosecutor correctly contends that the pursuit of a suspect does not constitute a seizure. In *People v Lewis*, 199 Mich App 556, 558-559; 502 NW2d 363 (1993), this Court held that a seizure does not occur when an officer begins to pursue a suspect. A seizure under the Fourth Amendment requires "either the application of physical force or the submission by the suspect to an officer's show of authority." *Id*. at 559, citing *California v Hodari*, 499 US 621; 111 S Ct 1547; 113 L Ed 2d 690 (1991).

Under the definition of "seizure" adopted in *Lewis*, the trial court properly considered defendant's failure to stop as part of the totality of the circumstances giving rise to reasonable suspicion. However, the rest of defendant's non-compliant behavior occurred after he was seized. When defendant stopped his vehicle, he submitted to the officers' authority. Although the trial court should not have considered this fact in determining the existence of reasonable suspicion, we find this error to be harmless. MCL 769.26 controls judicial review of preserved, nonconstitutional errors. *People v Lukity*, 460 Mich 484, 495; 596 NW2d 607 (1999). The statute requires reversal of a conviction only where, after an examination of the entire cause, "it is more probable than not that the error was outcome determinative." *Id.* Here, had the trial court declined to consider the evidence of defendant's uncooperative behavior, the totality of the circumstances would nonetheless have given rise to reasonable suspicion. Therefore, the error was not outcome determinative and defendant's convictions must stand.

Affirmed.

/s/ Michael R. Smolenski
/s/ Henry William Saad
/s/ Kirsten Frank Kelly