

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

CLIFTON WHITE,

Defendant-Appellee.

UNPUBLISHED

March 25, 2004

No. 242477

Wayne Circuit Court

LC No. 02-003275

Before: Zahra, P.J., and Saad and Schuette, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order of dismissal entered after the court found evidence was obtained following an illegal seizure. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

While investigating a report of drug sales, police observed defendant standing outside the subject building. As the officers approached, defendant ran inside the building. When officers chased him, defendant discarded a bag containing other bags of cocaine. Relying on *People v Shabaz*, 424 Mich 42; 378 NW2d 451 (1985), the trial court found the seizure was illegal, suppressed the evidence, and dismissed the case.

In *People v Mamon*, 435 Mich 1, 4 n 2; 457 NW2d 623 (1990), the Court observed that *Shabaz*, *supra*, had assumed without deciding that the police chase constituted a seizure. Following *Michigan v Chesternut*, 486 US 567; 108 S Ct 1975; 100 L Ed 2d 565 (1988), the Michigan Supreme Court concluded that a person is not seized when he is merely followed by police. In *California v Hodari D*, 499 US 621; 111 S Ct 1547; 113 L Ed 2d 690 (1991), the Supreme Court held that a seizure does not occur until an officer physically detains a suspect. Where a person discards a bag during a pursuit before he is actually seized, the contents of bag may not be suppressed as the fruit of an illegal detention. *People v Lewis*, 199 Mich App 556, 560; 502 NW2d 363 (1993).

Defendant was not seized until he was arrested in his apartment. Prior to that time, he had discarded the baggie containing the controlled substance. The abandonment of the bag was not the result of a seizure. The trial court erred in suppressing the evidence and dismissing the case.

Reversed.

/s/ Brian K. Zahra

/s/ Henry William Saad

/s/ Bill Schuette