

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT LASALLE,

Defendant-Appellant.

UNPUBLISHED
November 9, 2004

No. 249133
Allegan Circuit Court
LC No. 02-012869-FC

Before: Murray, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of possession with intent to deliver 650 grams or more of cocaine, MCL 333.7401(2)(a)(i), and his resulting sentence of life in prison, entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A package containing 995 grams of cocaine was found in defendant's vehicle during a consensual search conducted during a traffic stop. Defendant moved to suppress the evidence on the ground that the search was illegal because the police officer lacked probable cause to detain him at the time it was conducted. The trial court, relying on the transcript of the preliminary examination, denied the motion, finding that based on the totality of the circumstances, the officer had sufficient reasonable suspicion to detain defendant and search the vehicle.

We review a trial court's findings of fact on a motion to suppress for clear error, and the ultimate decision de novo. *People v Darwich*, 226 Mich App 635, 637; 575 NW2d 44 (1997).

A brief investigatory stop short of arrest is permitted if an officer has a reasonable suspicion that criminal activity is afoot. *Terry v Ohio*, 392 US 1, 16; 88 S Ct 1868; 20 L Ed 2d 889 (1968). An investigatory stop must be justified by a particularized suspicion, based on some objective manifestation, that a person is, has been, or is about to be engaged in some type of criminal activity. The suspicion must be based on the totality of the circumstances. *People v Shields*, 200 Mich App 554, 557; 504 NW2d 711 (1993). In determining the existence of a reasonable suspicion, the trial court should consider the objective facts, and should defer to the experience of law enforcement officers and their assessments of criminal modes and patterns of behavior. *People v Oliver*, 464 Mich 184, 196, 200; 627 NW2d 297 (2001).

Defendant argues that his conviction must be reversed because the trial court erred by denying his motion to suppress the evidence. We disagree. In determining whether the totality of the circumstances established reasonable suspicion to support an investigatory stop, the circumstances must be viewed as understood by law enforcement officers based on common sense and everyday life experiences. *Id.* at 192. Here, defendant was extremely nervous throughout the encounter. Nervous behavior can support a finding of reasonable suspicion. *People v Lewis*, 251 Mich App 58, 74-75; 649 NW2d 792 (2002). Defendant did not have the address of the friend's home to which he said he was traveling, and he and his passenger gave conflicting information regarding their travel plans and purpose. We conclude that the detention of defendant between the conclusion of the traffic stop to investigate his possible intoxication and the point at which he gave consent to search the vehicle was supported by the officer's reasonable suspicion that defendant was involved in illegal activity, i.e., narcotics trafficking. *Oliver, supra; Shields, supra.*

We reject defendant's assertion that his consent to search the vehicle was not freely and voluntarily given because he believed it would be futile to refuse. Consent must be freely and voluntarily given in order to be valid. *People v Marsack*, 231 Mich App 364, 378; 586 NW2d 234 (1998). However, an investigatory stop is not so inherently coercive as to render consent given during the stop involuntary. *People v Acoff*, 220 Mich App 396, 400; 559 NW2d 103 (1996). The record does not support defendant's contention that he did not freely and voluntarily consent to the search of the vehicle.

Defendant was sentenced to life in prison, as mandated by the version of MCL 333.7401(2)(a)(i) in effect on the date he committed the offense. 2002 PA 666, effective March 1, 2003, amended the statute to provide that possession with intent to deliver 450 grams or more but less than 1000 grams of a controlled substance was punishable by imprisonment for not more than thirty years or a fine of \$500,000.00, or both.

Defendant argues that he is entitled to be resentenced under the amended version of the statute. We disagree. In *People v Thomas*, 260 Mich App 450, 458-459; 678 NW2d 631 (2004), we held that the amended version of MCL 333.7401 applies only to offenses committed on or after March 1, 2003. Defendant is not entitled to resentencing.

Affirmed.

/s/ Christopher M. Murray

/s/ David H. Sawyer

/s/ Michael R. Smolenski