

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

TERRENCE ALBERT HENDERSON,

Defendant-Appellee.

UNPUBLISHED

June 23, 2009

No. 285506

Wayne Circuit Court

LC No. 08-002774-FH

Before: Owens, P.J., and Servitto and Gleicher, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order dismissing two counts of possession of a controlled substance, MCL 333.7403(2)(b)(ii), after granting defendant's motion to quash. We reverse and remand. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The police were called to defendant's workplace to investigate a complaint that defendant may have had a weapon or drugs. They approached defendant and told him why they were there. He denied possession of any contraband. The police requested and were granted consent to search him, whereupon they found the controlled substances on defendant's person. Defendant's challenge to the search and seizure was rejected by the district court and defendant was bound over for trial. Defendant renewed his challenge in a motion to quash, which the trial court granted.

We review the trial court's factual findings for clear error, and review its ultimate decision de novo. *People v Marcus Davis*, 250 Mich App 357, 362; 649 NW2d 94 (2002). A circuit court's ruling on a motion to quash on legal grounds is reviewed for error. *People v Pitts*, 216 Mich App 229, 232; 548 NW2d 688 (1996).

Relying on *People v Faucett*, 442 Mich 153; 499 NW2d 764 (1993), the trial court determined that the search of defendant was not justified because the police investigation was initiated by an uncorroborated anonymous tip.

Faucett involved an investigative traffic stop based on an anonymous tip. *Id.* at 154. "An investigatory stop, which is limited to a brief and nonintrusive detention, constitutes a Fourth Amendment seizure." *People v Jones*, 260 Mich App 424, 429; 678 NW2d 627 (2004). To conduct an investigatory stop, a police officer must have specific and articulable facts

sufficient to create a reasonable suspicion of criminal activity. *People v Shankle*, 227 Mich App 690, 693; 577 NW2d 471 (1998). In *Faucett*, the Court held that an anonymous tip can support a finding of reasonable suspicion if the information has “sufficient indicia of reliability under the totality of the circumstances.” *Faucett*, *supra* at 169, 172.

In this case, by contrast, while the police were conducting an investigation, which may even have resulted from an anonymous tip, the police did not conduct an investigatory stop. They simply approached and questioned defendant at his workplace. “When an officer approaches a person and seeks voluntary cooperation through noncoercive questioning, there is no restraint on that person’s liberty, and the person is not seized.” *People v Jenkins*, 472 Mich 26, 33; 691 NW2d 759 (2005). While the officer testified that in his opinion defendant was not free to leave, “only *objective* conduct and circumstances are relevant for Fourth Amendment purposes.” *Id.* at 32 n 6 (emphasis in original). Thus, “the subjective intent of the officers is relevant to an assessment of the Fourth Amendment implications of police conduct only to the extent that that intent has been conveyed to the person confronted.” *Michigan v Chesternut*, 486 US 567, 575 n 7; 108 S Ct 1975; 100 L Ed 2d 565 (1988). There is no evidence that the officer conveyed his belief that defendant had been detained, either expressly, such as by telling him he could not leave and must answer questions, or by conduct, such as by a show of authority, *People v Mamon*, 435 Mich 1, 12; 457 NW2d 623 (1990); *People v Lewis*, 199 Mich App 556, 559; 502 NW2d 363 (1993), or by interfering with defendant’s attempt to refuse to cooperate and walk away. *Jenkins*, *supra* at 34; *People v Daniels*, 160 Mich App 614, 619; 408 NW2d 398 (1987). The officer testified that defendant was cooperative and expressly consented to a search of his person and his locker. Because there is no evidence that defendant’s consent was not freely and intelligently given, see *People v Farrow*, 461 Mich 202, 206; 600 NW2d 634 (1999), defendant waived his Fourth Amendment rights with respect to the search of his person. *People v Goforth*, 222 Mich App 306, 309; 564 NW2d 526 (1997). Thus, on the record presented, the trial court erred in finding that the evidence was illegally seized.

Reversed and remanded for reinstatement of the charges. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ Deborah A. Servitto
/s/ Elizabeth L. Gleicher