STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRADLEY SCOTT LASCO,

Defendant-Appellant.

UNPUBLISHED
February 18, 2010

No. 290603
Ionia Circuit Court
LC No. 2008-014149-FH

Before: Fitzgerald, P.J., and Cavanagh and Davis, JJ.

PER CURIAM.

Defendant was convicted by a jury of possession of methamphetamine, MCL 333.7403(2)(b)(*i*), and possession of marijuana, MCL 333.7403(2)(d). The trial court imposed concurrent sentences of imprisonment of one year for the marijuana conviction, and 18 months to 20 years for the methamphetamine conviction. That latter sentence was enhanced in light of defendant's status as a third habitual offender, MCL 769.11. Defendant appeals as of right, arguing that the trial court erred in denying his motion to suppress evidence. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

According to police testimony presented at the suppression hearing, including testimony from the preliminary examination incorporated into that hearing, an officer was attempting to serve a friend of the court warrant when he made an inquiry of two who fled when he identified himself as a deputy sheriff. The officer called two other officers to the location, and they began searching for the runaways. One of those officers questioned one person, then spotted defendant nearby and ordered him to raise his hands. The second pursing officer heard the first yell to defendant, then himself ordered defendant to the ground. Defendant obeyed neither command, and was seen dropping something to the ground. The second officer then physically took defendant to the ground and handcuffed him. The police found a bag of marijuana and defendant's billfold near where defendant was standing. The police ran a check on defendant's name and found that he was wanted on a misdemeanor warrant. The police arrested defendant and found methamphetamine in his billfold.

The Fourth Amendment of the United States Constitution guarantees the right to be free from unreasonable searches and seizures. The Due Process Clause of the Fourteenth Amendment incorporates that protection as one the states are obliged to respect. *Mapp v Ohio*, 367 US 643; 81 S Ct 1684; 6 L Ed 2d 1081 (1961). Evidence obtained in the course of a violation of a suspect's rights under the Fourth Amendment of the United States Constitution is

subject to suppression at trial. *People v Cartwright*, 454 Mich 550, 557-558; 563 NW2d 208 (1997).

The Fourth Amendment permits the police to stop and briefly detain a person based on reasonable suspicion that criminal activity may be at hand. *Terry v Ohio*, 392 US 1, 30-31; 88 S Ct 1868; 20 L Ed 2d 889 (1968).[1]

Defendant concedes that the police observed him dropping something when the police initially issued verbal commands, so he essentially likewise concedes that the baggie of marijuana was already in plain view before defendant was handcuffed. Instead, defendant asserts that the police improperly seized defendant upon issuing their oral commands that he raise his hands, then go to the ground. Defendant argues that because the contraband was discovered as the result of that impermissible seizure, the evidence should have been suppressed. We disagree that the oral commands constituted a seizure in this case.

The Fourth Amendment does not apply where a person has not been seized. See *People v Shabaz*, 424 Mich 42, 52; 378 NW2d 451 (1985). A person is seized when the police, by physical force or other show of authority, succeed in restraining that person's liberty. See *Michigan v Chesternut*, 486 US 567, 573; 108 S Ct 1975; 100 L Ed 2d 565 (1988). "[T]he police can be said to have seized an individual only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *Id.* (internal quotation marks and citation omitted).

However, an expression of authority to which the subject does not yield is not a seizure. *California v Hodari D*, 499 US 621; 111 S Ct 1547, 1550-1551; 113 L Ed 2d 690, 697 (1991). A seizure instead requires application of physical force or submission to the assertion of authority. *People v Lewis*, 199 Mich App 556, 559; 502 NW2d 363 (1993). Accordingly, where a suspect discards contraband while attempting to evade the police, no seizure has occurred at that time, and thus the contraband may properly be retrieved and used as evidence. *Id.* at 558-560.

In this case, the uncontroverted evidence showed that defendant failed to obey police commands to raise his hands and to go to the ground, so he was not seized until an officer

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[1] In *Terry*, the United States Supreme Court elaborated as follows:

> where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. [392 US at 30.]

physically constrained him. Although defendant was not fleeing, he was nonetheless not obeying.[2] Because the police saw defendant discard something before defendant was physically seized, the police were justified in retrieving what had been discarded, which turned out to be marijuana. Accordingly, neither that discovery, nor the subsequent discovery of methamphetamine in defendant's billfold upon his arrest on the misdemeanor warrant, were the fruit of any poisonous tree. See *Wong Sun v United States*, 371 US 471, 487-488; 83 S Ct 407; 9 L Ed 2d 441 (1963).

For these reasons, we conclude that the trial court properly denied the motion to suppress.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Mark J. Cavanagh
/s/ Alton T. Davis

[2] Because the evidence shows that defendant was already stationary when the police found him in the first instance, his continuing to stand still while disregarding the explicit commands from the police is difficult to interpret as yielding to authority.