STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED December 21, 2010
v	No. 297939 Ingham Circuit Court
TRACY WALTER HARRY, Defendant-Appellee.	LC No. 10-000169-FH

Before: BECKERING, P.J., and TALBOT and OWENS, JJ.

PER CURIAM.

Tracy Harry was charged with carrying a concealed weapon (CCW).[1] The prosecutor challenges the suppression of evidence based on the trial court's having found the absence of a reasonable suspicion by the police officer to detain Harry. Harry, in turn, challenges the trial court's denial of his motion to dismiss the charges contending, based on the dwelling house exception, that he had a right to have a concealed weapon in the parking lot as a resident of the apartment complex. We affirm in part, reverse in part and remand to the trial court for further proceedings.

Lansing police detective Del Kostanko was dispatched to an apartment building to investigate a reported disturbance. The dispatcher did not provide any physical descriptions or information other than to indicate that one individual was armed with a knife, one possessed a firearm and a third person was "overdosing on drugs." When Kostanko arrived at the scene, he observed Harry walking quickly through the parking lot of the apartment complex. Specifically, Harry was walking from a wooded area approximately one hundred yards from the apartment building. Kostanko drove near Harry and shined a spotlight on him. Harry did not stop or acknowledge the officer until Kostanko exited his vehicle and verbally ordered Harry to stop. When Kostanko physically approached Harry he inquired whether he was carrying any weapons. Harry verbally responded that he had a knife. When officers arrived to assist, Harry was searched and a knife was found concealed in the small of his back.

[1] MCL 750.227(1).

In the lower court, Harry sought to dismiss the charges asserting that, as a tenant of the apartment complex, he had a possessory interest in the parking lot that would preclude the impropriety of his having a concealed weapon at that location. Additionally, Harry contended that Kostanko lacked a reasonable suspicion to detain him and that any evidence obtained should be suppressed. While the trial court denied Harry's motion to dismiss the charges based on the absence of a possessory interest in the parking lot it granted his motion to suppress, ruling that Kostanko lacked a reasonable suspicion to detain Harry.

On a motion to suppress evidence:

> We review a trial court's findings of fact for clear error, giving deference to the trial court's resolution of factual issues. "A finding of fact is clearly erroneous if, after a review of the entire record, an appellate court is left with a definite and firm conviction that a mistake has been made." We overstep our review function if we substitute our judgment for that of the trial court and make independent findings. However, we review de novo the trial court's ultimate decision on a motion to suppress.[2]

Similarly, issues involving statutory interpretation comprise questions of law that we review de novo.[3] We review a trial court's ruling on a motion to dismiss for an abuse of discretion.[4]

In denying Harry's motion to dismiss the CCW charge, the following statutory language is controlling:

> A person shall not carry a dagger, dirk, stiletto, a double-edged nonfolding stabbing instrument of any length, or any other dangerous weapon, except a hunting knife adapted and carried as such, concealed on or about his or her person, or whether concealed or otherwise in any vehicle operated or occupied by the person, except in his or her dwelling house, place of business or on other land possessed by the person.[5]

Harry does not contest that he was carrying a concealed weapon, only that the "dwelling house" exception was applicable because he maintained a possessory interest in the parking lot as a tenant of the apartment complex. The trial court correctly rejected this argument.

In interpreting portions of this statute, our Supreme Court has stated:

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[2] *People v Bolduc*, 263 Mich App 430, 436; 688 NW2d 316 (2004) (citations omitted).

[3] *People v Williams*, 483 Mich 226, 231; 769 NW2d 605 (2009).

[4] *People v Jones*, 252 Mich App 1, 4; 650 NW2d 712 (2002).

[5] MCL 750.227(1).

> [I]t is well to begin by recalling the bedrock rule that the goal of judicial interpretation of a statute is to ascertain and give effect to the intent of the Legislature. "The first step in that determination is to review the language of the statute itself." Thus, if the language is clear, no further construction is necessary or allowed to expand what the Legislature clearly intended to cover.[6]

The recognized purpose underlying the statutory exemptions contained in MCL 750.227(1) "was to allow persons to defend those areas in which they have a possessory interest."[7] "In order to qualify for the dwelling house exception, the defendant must present evidence that the location where the concealed [weapon] was carried was defendant's dwelling house."[8] To include, as argued by Harry, the curtilage of the apartment building is overly expansive and not within the meaning contemplated by the Legislature or the statutory language, which refers to "in his or her dwelling house . . . or on other land possessed." It is well recognized and consistent with the terminology used in the context of leased residential property, that sidewalks and parking lots of apartment complexes are deemed "common areas," which is defined as:

> In law of landlord-tenant, the portion of demised premises used in common by tenants over which landlord retains control . . . and hence for whose condition he is liable, as contrasted with areas of which tenant has exclusive possession."[9]

Specifically, "[t]he landlord grants to tenants rights of exclusive possession to designated portions of the property, but the landlord retains exclusive possession of the common areas. The landlord grants to tenants a license to use the common areas of the property."[10] As Harry had only a right of use of the parking lot and not a possessory interest, the trial court correctly denied his request to dismiss the CCW charge pursuant to the dwelling house exception.

But the trial court erred in suppressing evidence based on its incorrect determination that the officer lacked a reasonable suspicion to detain Harry. "The Fourth Amendment of the United States Constitution and its counterpart in the Michigan Constitution guarantee the right of persons to be secure against unreasonable searches and seizures."[11] "An investigatory stop, which is limited to a brief and nonintrusive detention, constitutes a Fourth Amendment

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[6] *People v Pasha*, 466 Mich 378, 382; 645 NW2d 275 (2002) (international citations omitted).

[7] *People v Clark*, 21 Mich App 712, 716; 176 NW2d 427 (1970).

[8] *Pasha*, 466 Mich at 382.

[9] *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 427; 751 NW2d 8 (2008), citing Black's Law Dictionary (6th ed), p 275.

[10] *Stanley v Town Square Coop*, 203 Mich App 143, 147; 512 NW2d 51 (1994).

[11] *People v Kazmierczak*, 461 Mich 411, 417; 605 NW2d 667 (2000).

seizure."[12] In order to conduct an investigatory stop, a police officer must have "specific and articulable facts sufficient to give rise to a reasonable suspicion" of criminal activity.[13]

> Reasonable suspicion entails something more than an inchoate or unparticularized suspicion or "hunch," but less than the level of suspicion required for probable cause. 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.[14]

"There is no bright line rule to test whether the suspicion giving rise to an investigatory stop was reasonable, articulable, and particular. Common sense and everyday life experiences predominate over uncompromising standards."[15] A certain level of deference is afforded to police officers under this standard based on their experience.[16]

Kostanko was dispatched to the location because of the report of a disturbance involving three individuals, two of whom had weapons and a third who could be in medical distress. On arrival, Kostanko observed only Harry at the location and approached him to make an inquiry. Harry's failure to give eye contact and continue walking when Kostanko shined the spotlight, coupled with the reason he was dispatched to the area, were sufficient to comprise a reasonable suspicion of criminal activity.[17] With minimal questioning by Kostanko, Harry acknowledged that he possessed a weapon. Based on the totality of these circumstances, we find the investigatory stop conducted by Kostanko to be lawful and any evidence obtained to be admissible.

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[12] *People v Jones*, 260 Mich App 424, 429; 678 NW2d 627 (2004).

[13] *People v Shankle*, 227 Mich App 690, 693; 577 NW2d 471 (1998).

[14] *People v Champion*, 452 Mich 92, 98-99; 549 NW2d 849 (1996) (citations omitted).

[15] *People v Nelson*, 443 Mich 626, 635-636; 505 NW2d 266 (1993).

[16] *Id.* at 636.

[17] *People v Oliver*, 464 Mich 184, 196-197; 627 NW2d 297 (2001).

We affirm in part, reverse in part and remand to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ Michael J. Talbot
/s/ Donald S. Owens