

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

UNPUBLISHED
May 22, 2012

v

MELISSA ANN DIXON,

Defendant-Appellee.

No. 299074
Oakland Circuit Court
LC No. 2010-009127-AR

Before: STEPHENS, P.J., and WHITBECK and BECKERING, JJ.

PER CURIAM.

Defendant was charged with possession of less than 25 grams of cocaine, MCL 333.7401(2)(a)(v). At her preliminary examination, 50th District Court Judge Cynthia Thomas Walker dismissed the charges for lack of probable cause. Oakland Circuit Court Judge Michael D. Warren, Jr. affirmed the district court's decision regarding the validity of defendant's arrest and subsequent search, but remanded to determine whether defendant had given her consent to the search. Plaintiff appeals by leave granted. We affirm and instruct the district court to determine whether defendant gave her consent for the search.

On October 3, 2009, defendant was detained by Pontiac Police Department Patrol Officer Brian Bovee and her purse was searched. Inside the purse, Officer Bovee found a small green wallet that contained a piece of crack cocaine and a crack pipe. Whether the detention and search of the purse were permissible is the central issue before us.

Defendant alleges that her constitutional rights under the Fourth Amendment were violated when the officer unlawfully detained her without probable cause. US Const, Am IV. Both the United States and Michigan Constitutions guarantee the right against unreasonable searches and seizures. *People v Corr*, 287 Mich App 499, 506; 788 NW2d 860 (2010). A seizure occurs when, under all the circumstances, a reasonable person would have believed that he was not free to leave. *People v Jenkins*, 472 Mich 26, 32; 691 NW2d 759 (2005). "Searches and seizures conducted without a warrant are unreasonable per se, subject to several specifically established and well-delineated exceptions." *People v Champion*, 452 Mich 92, 98; 549 NW2d 849 (1996). One such well-delineated exception is the *Terry* stop. *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968).

Under *Terry* and its progeny, "[p]olice officers may make a valid investigatory stop if they possess 'reasonable suspicion' that crime is afoot." *Champion*, 452 Mich at 98. A limited

patdown for weapons is allowed under *Terry* when the circumstances are such that it is objectively reasonable to do so. *Terry*, 392 US at 24; *Scott v United States*, 436 US 128, 138; 98 S Ct 1717; 56 L Ed 2d 168 (1978) (instructing that a challenged search should be examined “without regard to the underlying intent or motivation of the officers involved”). If a search for weapons exceeds the limits of a valid *Terry* patdown, it is no longer permissible and any evidence obtained as a result should be suppressed. *Minnesota v Dickerson*, 508 US 366, 373; 113 S Ct 2130; 124 L Ed 2d 334 (1993).

We conclude that an officer presented with the circumstances testified to by Officer Bovee would have a reasonable articulable suspicion that defendant was engaged in criminal activity when she was detained. Officer Bovee stopped defendant in an area where prostitution is known by the police to occur with some frequency. See *People v Nelson*, 443 Mich 626, 633; 505 NW2d 266 (1993). Officer Bovee spotted defendant walking down the street attempting to flag down passing motorists. Officer Bovee testified that when soliciting, prostitutes will walk “up and down a certain area,” “get the driver’s attention,” and then “usually get[] into the car and . . . negotiate some kind of deal.” See *id.* at 636, quoting *United States v Cortez*, 449 US 411, 418; 101 S Ct 690; 66 L Ed 2d 621 (1981) (“In analyzing the totality of the circumstances, the law enforcement officers are permitted, if not required, to consider ‘the modes or patterns of operation of certain kinds of lawbreakers. From [this] data, a trained officer draws inferences and makes deductions—inferences and deductions that might well elude an untrained person.’”) (alteration by *Nelson*). When Officer Bovee stopped and spoke with defendant, she indicated that she was heading to her sister’s house. Yet, after Officer Bovee left and began to watch her from a distance, defendant walked to a 7-11 convenience store and spoke with two people in the parking lot. She then returned to flagging down vehicles, including a Grand Prix that pulled over, despite the fact that the 7-11 was on the street where she said her sister lived. Defendant was approaching the Grand Prix when it left the scene after Officer Bovee pulled his vehicle behind it.

Based on the circumstances described above, Officer Bovee was permitted to detain defendant and conduct a limited search of her purse for weapons. However, the narcotics and paraphernalia that were ultimately discovered during that search were not merely discovered in defendant’s purse. Rather, those items, which form the basis of her prosecution, were discovered in a small green wallet that was located inside of her purse. Based on the record before us, we cannot conclude that the wallet that contained the illegal items was within the scope of the *Terry* stop as it is unclear whether it was reasonable to conclude that the wallet could have contained a weapon. Therefore, the search was not permissible under *Terry*. However, as the circuit court properly noted, the district court failed to determine whether defendant consented to the search of her purse, which would render the search constitutional. The district court is directed to address the issue of consent on remand.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ William C. Whitbeck
/s/ Jane M. Beckering