

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

RODNEY JOSEPH ZAVERL,

Defendant-Appellee.

UNPUBLISHED

December 30, 1997

No. 197168

Livingston Circuit Court

LC No. 96-009262-FH

Before: Markey, P.J. and Michael J. Kelly and Whitbeck, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order suppressing evidence and dismissing the charge against defendant for possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v). We reverse and remand.

The issue raised in this appeal is whether the circumstances surrounding defendant's detention justified an investigatory stop under *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968), and its progeny and whether evidence obtained incident to the stop was properly suppressed. We conclude that the trial court erred by granting defendant's motion to suppress because the investigatory stop was supported by the requisite "reasonable suspicion" and that the police officer in question, Trooper Bullock, did not commit any unreasonable search or seizure during the course of the investigatory stop.

We briefly summarize the basic facts of this case.¹ At about 8:55 p.m. on December 24, 1995, Trooper Stephen Bullock of the Michigan State Police, while driving his patrol car, saw an apparently unoccupied semi-tractor trailer parked in front of the Glen Oaks Bar in Livingston County with its motor running. About three or four weeks earlier, a confidential informant had told Trooper Bullock that three people were dealing cocaine from that bar, that two of them were driving semi-tractor trailers and that one of the three was named "Rodney." Trooper Bullock pulled in the parking lot of the bar to perform a check of the license plate on the semi-tractor trailer. He then saw defendant walk out of the front door of the bar. He described defendant as "slightly staggering." Defendant walked in the direction of

the semi-tractor trailer, but stopped suddenly. It appeared to Trooper Bullock that defendant abruptly stopped on seeing the trooper's marked patrol car. Defendant turned and walked to a parked car, opened the driver side door and appeared to rummage inside the car for roughly fifteen to thirty seconds. Defendant again walked in the direction of the semi-tractor trailer, but then abruptly turned and walked to the parked car, through which he again rummaged. Then, defendant began to walk between the patrol car and the semi-tractor trailer.

Trooper Bullock stated that, based on defendant's slight stagger as he came out of the bar, defendant's abrupt movements and the fact that it took defendant a few seconds to focus on the patrol car before quickly turning away, the trooper suspected that defendant may have been intoxicated. At some point, as defendant walked near the patrol car, Trooper Bullock asked defendant what was happening. Defendant leaned to a window of the patrol car and said something like "no" or "nothing." Trooper Bullock asked defendant if he had identification, to which defendant replied negatively. Trooper Bullock smelled intoxicants on defendant's breath. Defendant abruptly turned and continued toward the semi-tractor trailer. Trooper Bullock was concerned because defendant "could not identify himself," he did not know what defendant "had been doing, secreting or picking up from the other vehicle he had been in," defendant was trying to avoid him and defendant may have been attempting to operate the semi-tractor trailer under the influence of alcohol.

Trooper Bullock stopped defendant as he was about to climb into the semi-tractor trailer. Trooper Bullock indicated that he was concerned for his own physical safety as defendant had left a "known rough bar," appeared to be intoxicated and clearly wished to avoid the trooper. Trooper Bullock then patted down defendant for weapons, but found none. However, Trooper Bullock felt a wallet. Trooper Bullock asked defendant if he would remove his identification and show it to the trooper. Defendant complied with the request and produced a driver's license. Trooper Bullock took the driver's license to his patrol car where he ran a check based on the driver's license, a so-called "LEIN check." He told defendant to stand in front of the semi-tractor where he could watch defendant.

While Trooper Bullock was running the check, defendant shuffled and moved around, eventually moving toward the semi-tractor trailer. Trooper Bullock told defendant to get back where he could see defendant, which defendant did. At a later point, Trooper Bullock saw defendant kicking at the snow in front of him and also saw a small object in the snow, which Trooper Bullock perceived defendant as trying to kick under the semi-tractor trailer. From the LEIN check, Trooper Bullock learned that defendant had an outstanding warrant. Accordingly, Trooper Bullock placed defendant under arrest. Trooper Bullock stated that computerized reports regarding the times that LIEN checks were run showed that "probably twelve minutes" transpired from the time when Trooper Bullock first pulled in the parking lot and saw the semi-tractor trailer to the time that Trooper Bullock learned a warrant was outstanding for defendant. After a backup police officer arrived, the object in the snow was discovered to be a baggie containing white powder.

The trial court granted defendant's motion to suppress the baggie and its contents. The trial court held that Trooper Bullock did not have a reasonable and articulable basis to believe that defendant

had committed a crime or was about to commit a crime, not even “OUIL” (operating a motor vehicle under the influence of intoxicating liquor), that defendant had the right to decline Trooper Bullock’s request for additional information and that the detention of defendant after Trooper Bullock found he had no weapons violated defendant’s constitutional rights. After the trial court’s ruling on the suppression question, the prosecutor stated that the order on the suppression matter could be “treated as an order to dismiss” because it deprived the prosecution of evidence necessary to convict defendant.²

As an initial matter, we note that, in concluding that Trooper Bullock’s investigatory stop of defendant was unlawful, the trial court did not express that it found the trooper’s testimony incredible or that it doubted his honesty about the historical facts of the stop. Indeed, at one point, the trial court stated, “The officer testified that in fact he smelled alcohol and I certainly accept his credibility on that...”³ Thus, in analyzing the legal rationale of the trial court’s holding, we accept the credibility of Trooper Bullock’s testimony. See *People v LoCicero*, 453 Mich 496, 500-501; 556 NW2d 498 (1996) (while a judge’s findings of facts following a suppression hearing will not be disturbed unless clearly erroneous, application of constitutional standards to essentially uncontested facts is not entitled to this level of deference).

We further note that the decision in this case ultimately depends on the propriety of the investigatory stop under *Terry, supra*. If this stop was not justified, then the “pat down” search conducted by Trooper Bullock, Trooper Bullock’s seizure of defendant and detention during the LEIN search and Trooper Bullock’s arrest of defendant were similarly not justified and the suppression of the cocaine evidence was proper. Conversely, if Trooper Bullock’s investigatory stop was justified, so was the patdown search, the seizure and detention and the arrest, while the cocaine evidence was not properly suppressed.

The standard of review to be applied to the trial court’s factual findings concerning Trooper Bullock’s suspicion of criminal activity and the investigatory stop is whether the findings were clearly erroneous. However, the question of whether such suspicion was reasonable under the Fourth Amendment is a question of law which this Court reviews de novo. *People v Bloxson*, 205 Mich App 236, 245; 517 NW2d 563 (1994). See also *Ornelass v United States*, ____ US ____; 116 S Ct. 1657; 134 L Ed 911 (1996)

When Trooper Bullock initiated contact with defendant by asking defendant questions, this did not constitute a seizure which required objective justification. See *People v Taylor*, 454 Mich 580, 589-590; 564 NW2d 24 (1997). However, when Trooper Bullock stopped defendant from entering the semi-tractor trailer, this detention constituted a seizure for which the Fourth Amendment requires reasonable and objective grounds. *Id.* at 589.

Specifically, the criteria for a constitutionally valid investigative stop are that the police have a particularized suspicion, based on an objective observation of the totality of the circumstances, that the person stopped has been, is, or is about to be involved in criminal wrongdoing. *People v McCrady*, 213 Mich App 474, 482; 540 NW2d 718 (1995). Reasonable suspicion entails something more than

an inchoate or unparticularized suspicion or “hunch,” but less than the level of suspicion required for probable cause. *People v Champion*, 452 Mich 92, 98; 549 NW2d 849 (1996). In analyzing the totality of the circumstances, common sense and everyday life experiences predominate over uncompromising standards, and law enforcement officers are permitted, if not required, to consider the modes or patterns of operation of certain kinds of lawbreakers. *People v Yeoman*, 218 Mich App 406, 410; 554 NW2d 577 (1996). Based on defendant’s slight stagger, odd behavior in walking between vehicles and the smell of alcohol on defendant’s breath, Trooper Bullock had specific and articulable grounds that, at minimum, reasonably supported his suspicion that defendant may have been intoxicated and may have been about to illegally operate the semi-tractor trailer under the influence of alcohol.⁴ Thus, contrary to the holding of the trial court, we conclude that the initial investigatory stop of defendant was supported by reasonable suspicion that defendant was about to engage in criminal activity.

An officer who makes a valid investigatory stop may perform a limited patdown search for weapons if the officer has reasonable suspicion that the individual stopped for questioning is armed and thus poses a danger to the officer. *Champion, supra* at 99. Trooper Bullock testified that the bar which defendant had left was known to be “rough.” A police officer’s reasonable suspicion may be based on information obtained from another person. *LoCicero, supra* at 507 n 19; *People v Chambers*, 195 Mich App 118, 122; 489 NW2d 168 (1992). Accordingly, we conclude that the trooper’s patdown searches of defendant’s exterior clothing were justified as a search for weapons.

Because defendant voluntarily provided Trooper Bullock with his driver’s license, additional justification was not required for the trooper to take possession of the driver’s license. *People v Goforth*, 222 Mich App 306, 309; 564 NW2d 526 (1997) (one may waive Fourth Amendment rights and consent to a search). Defendant had previously told Trooper Bullock that he had no identification. Accordingly, Trooper Bullock had reasonable grounds to be suspicious that defendant was trying to conceal his identity. During the course of a proper investigative stop, the brief detention of a suspicious individual to maintain the status quo momentarily while more information is obtained may be reasonable. *Chambers, supra* at 121. Under the circumstances, Trooper Bullock had a reasonable basis to briefly detain defendant while having the LEIN check run. Twelve minutes elapsed from the time when Trooper Bullock arrived at the Glen Oaks Bar and the time that he determined there was an outstanding warrant for defendant’s arrest. The time during the investigatory stop when defendant was deprived of freedom of movement was, of necessity, even shorter. The question to be asked in assessing whether a detention is too long in duration to be justified as an investigatory stop is whether the police were diligently pursuing a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain those stopped. *Chambers, supra* at 123 (twenty-minute detention was reasonable). Trooper Bullock diligently investigated whether defendant had any outstanding warrants; the length of the detention -- certainly no more than twelve minutes -- was reasonable. After learning that there was an outstanding warrant, the trooper arrested defendant, bringing an end to the investigatory stop.

We conclude that the trial court erred in granting defendant's motion to suppress the evidence at issue. Trooper Bullock did not commit any improper search or seizure in connection with the investigatory stop. Trooper Bullock's subsequent patdown search, the seizure and detention of defendant and the arrest of defendant were, consequently, justified. Since the suspicion upon which the investigatory stop was based was reasonable, suppression of the cocaine evidence was, therefore, error as a matter of law.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane E. Markey

/s/ William C. Whitbeck

I concur in result only.

/s/ Michael J. Kelly

¹ These facts are based on the testimony of Trooper Stephen Bullock, the only witness to testify at the suppression hearing.

² Thus, although no such testimony was presented below, we infer that testing of the white powder found that it contained cocaine.

³ At oral argument, counsel for defendant stated that, except for Trooper Bullock's testimony concerning the geographic extent of the outstanding warrant against Defendant, he was not challenging Trooper Bullock's honesty or credibility.

⁴ MCL 257.625; MSA 9.2325, as in effect at the time of the traffic stop and as currently in effect, defines OUIL as a crime.