

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DEJETO DJELJAL,

Defendant-Appellee.

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UNPUBLISHED

February 2, 2001

No. 222302

Wayne Circuit Court

LC No. 98-010125

Before: Neff, P.J., and Talbot and J.B. Sullivan,\* JJ.

PER CURIAM.

Defendant was charged with possession with intent to deliver more than 50 but less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii). The trial court granted defendant's motion to suppress evidence confiscated pursuant to a stop of a vehicle driven by defendant, and dismissed the case. The prosecution appeals as of right. We reverse.

As part of a drug task force, Wayne County Police Lieutenant David DeBiasi established a surveillance of a Farmer Jack parking lot in Hamtramck. The surveillance activities were based upon information provided to United States Border Patrol Special Agent Jeffrey Couture by a known, reliable informant. The informant had indicated that defendant and another person would be conducting a drug sale in the parking lot that afternoon. The informant provided defendant's name, physical description, and stated that defendant was a national of Albania or Yugoslavia. The informant also gave the name and description of the other participant in the planned transaction. The informant described two vehicles that would be used, a white Sonoma pickup truck and a dark-colored Oldsmobile.

DeBiasi observed a white Sonoma pickup truck parked in the corner of the parking lot. The driver, later identified as Freddie Ruis, got out of the truck and crossed the street. Ten or fifteen minutes later, Ruis returned to the parking lot and met with another individual in a red Pontiac Firebird. The driver of the Pontiac left the area, and later returned. Ruis walked up and down the street and eventually met up with the Pontiac again and a dark-colored Oldsmobile, driven by defendant. Ruis crouched between the Oldsmobile and the Pontiac and apparently engaged in a three-way conversation with defendant and the driver of the Pontiac. The Pontiac driver drove to another area of the parking lot. Ruis and defendant "switched" vehicles, and defendant drove away in the Sonoma pickup truck.

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\*Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

The surveillance team's observations were communicated by radio to Couture, who was parked a short distance from the surveillance site. On the basis of the informant's information and the suspicious activities observed in the parking lot, Couture and other officers pulled defendant over.<sup>1</sup> Couture questioned defendant about his nationality. At Couture's request, defendant exited the vehicle. Couture asked defendant for permission to search the vehicle, and defendant consented. As Couture approached the truck from the passenger side, while still outside the vehicle, Couture observed through the window on the seat an open, white grocery bag containing a plastic bag of a substance which appeared to be cocaine. The cocaine was confiscated and defendant was arrested.

At the conclusion of an evidentiary hearing, the trial court granted defendant's motion to suppress the cocaine evidence. Although it is unclear what standard the trial court applied in making its ruling, the court articulated the inquiry as "whether the officers had the sufficient probable cause, and reasonable suspicion to believe that the defendant is engaging in criminal activity."<sup>2</sup>

On appeal, the prosecution argues that the trial court erred in suppressing the evidence on the basis of these findings. We agree. To the extent that a lower court's decision on a motion to suppress is based on an interpretation of the law, appellate review is de novo. *People v Kaslowski*, 239 Mich App 320, 323; 608 NW2d 539 (2000). Factual findings made in conjunction with a motion to suppress are reviewed for clear error. *Id.*; MCR 2.613(C).

The Fourth Amendment of the United States Constitution and Const. 1963, art 1, § 11 grant individuals the right to be secure against unreasonable searches and seizures. *People v Peebles*, 216 Mich App 661, 664-665; 550 NW2d 589 (1996). "It is well established that brief investigative stops short of arrest are permitted where police officers have a reasonable suspicion of ongoing criminal activity." *Id.*, citing *People v Christie (On Remand)*, 206 Mich App 304, 308; 520 NW2d 647 (1994), citing *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968). See also *People v Faucett*, 442 Mich 153, 168; 499 NW2d 764 (1993). The criterion for a constitutionally valid investigative stop is that the police have "a particularized suspicion, based on an objective observation, that the person stopped has been, is, or is about to be engaged

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<sup>1</sup> Couture testified that, in addition to a reasonable suspicion of criminal activity, he was also authorized to stop defendant pursuant to the Immigration and Nationality Act, 8 USC 1357, and ancillary regulation, 8 CFR 287. The federal statute and regulation gave Couture the authority to stop and interrogate any person believed to be a foreign national regarding his right to be or to remain in the United States. See 8 USC 1357(a)(1) and 8 CFR 287(a)(1). Defendant indicated that he was a national of Yugoslavia.

<sup>2</sup> The trial court stated that, although Couture testified generally to the informant's reliability and previous use on three or four occasions, there was no testimony that the informant had supplied information that resulted in any convictions, "just that his credibility was good and his reliability was good." The trial court further noted that there was no indication that the informant spoke with personal knowledge of the facts provided to Couture. The trial court determined that sufficient corroboration of the informant's story was lacking because the informant did not specify which vehicle would be driven by defendant, nor whether defendant would be the buyer or the seller of the cocaine. Additionally, defendant's identity was not corroborated.

in criminal wrongdoing.” *Peebles, supra* at 665, quoting *People v Shabaz*, 424 Mich 42, 59; 378 NW2d 451 (1985). The totality of the circumstances are to be considered to assess the officer’s suspicion that criminal activity is afoot. *Shabaz, supra* at 59; *Peebles, supra* at 665; *Christie, supra* at 308.

An informant’s tip can provide the basis for reasonable suspicion necessary to stop a motor vehicle if the information carries enough indicia of reliability to provide the officer with a reasonable suspicion of criminal activity. *People v Tooks*, 403 Mich 568, 576; 271 NW2d 503 (1978); *People v Armendarez*, 188 Mich App 61, 67; 468 NW2d 893 (1991), citing *Adams v Williams*, 407 US 143, 147; 92 S Ct 1921, 1923; 32 L Ed 2d 612 (1972). On review, we examine three factors to determine whether the informant’s tip carried enough indicia of reliability to supply the basis for reasonable suspicion to stop defendant’s vehicle: (1) the reliability of the informant, (2) the nature of the information given the police, and (3) the reasonableness of the suspicion in light of these factors. *Armendarez, supra* at 67-68. See also *Tooks, supra* at 576-577.

Applying these principles to the present case, we hold that the stop of defendant’s vehicle was proper. Couture testified that the informant had been utilized on three or four previous occasions, and had proven to be reliable and credible. The informant’s tip had provided defendant’s name, nationality, and physical description. The informant also gave the name and ethnicity of Freddy Ruis, the other participant in the transaction. The informant told Couture the place and approximate time that the drug transaction would take place, as well as the quantity of cocaine to be sold. Finally, the informant described the two vehicles that would be involved, a dark-colored Oldsmobile and a white Sonoma pickup truck. DeBiasi observed both a white Sonoma pickup truck and a dark-colored Oldsmobile in the parking lot. DeBiasi observed interaction among the drivers of the two vehicles and the driver of the Pontiac, and their activities could be construed as consistent with a drug sale. The detailed information provided by a reliable informant, corroborated by and coupled with the suspicious activity witnessed by DeBiasi, established a reasonable suspicion of criminal activity to justify an investigatory stop of defendant.<sup>3</sup>

Further, the officer properly seized the cocaine inside the vehicle. “One established exception to the general warrant and probable cause requirements is a search conducted pursuant to consent.” *People v Borchard-Ruhland*, 460 Mich 278, 294; 597 NW2d 1 (1999), citing *Schneckloth v Bustamonte*, 412 US 218, 219; 93 S Ct 2041; 36 L Ed 2d 854 (1973). It is undisputed that defendant consented to a search of his vehicle. Moreover, after defendant consented to a search of the truck, Couture approached the vehicle from the passenger side and observed “a white chunky substance in a plastic bag inside the white grocery bag.” The plain view doctrine “states that if police are lawfully in a position from which they view an object, if

<sup>3</sup> In his brief, defendant cites *Armendarez, supra*, for the standard used to evaluate an informant’s credibility when the informant’s tip forms reasonable suspicion for an investigatory stop. Defendant then proceeds to evaluate the informant’s tip under a probable cause standard. “[T]he reasonable suspicion standard is less demanding than the probable cause standard in terms of both the quantity and quality of information.” *Faucett, supra* at 165 n 16, citing *Alabama v White*, 496 US 325, 330; 110 S Ct 2412, 2416; 110 L Ed 2d 301 (1990).

its incriminating character is immediately apparent, and if the officers have a lawful right of access to the object, they may seize it without a warrant.” *People v Champion*, 452 Mich 92, 104; 549 NW2d 849 (1996). See also *People v Davis*, 442 Mich 1, 9-10; 497 NW2d 910 (1993). Based upon the consent and plain view exceptions to the warrant and probable cause requirements, the seizure of the evidence was proper. Accordingly, the trial court erred in suppressing the evidence.

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

/s/ Janet T. Neff

/s/ Michael J. Talbot

/s/ Joseph B. Sullivan