STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ARTHUR NELSON,

Defendant-Appellee.

UNPUBLISHED
February 1, 2002

No. 229492
Wayne Circuit Court
LC No. 00-002089

Before: White, P.J., and Whitbeck, C.J., and Holbrook, J.

PER CURIAM.

Defendant was charged with possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv), and moved to suppress evidence, challenging the search of his vehicle.[1] The circuit court granted defendant's motion to suppress the evidence. The prosecution appeals as of right, and we reverse and remand for trial.

The circuit court granted defendant's motion to suppress on the basis that "there was no reason to stop [the] car at that time." Plaintiff asserts that there was, in fact, probable cause to stop and search the vehicle. Defendant contends that the circuit court correctly determined that there was no basis to stop the vehicle. This Court reviews de novo a trial court's ultimate decision on a motion to suppress. *People v Echavarria*, 233 Mich App 356, 366; 592 NW2d 737 (1999). However, the trial court's underlying findings of fact are reviewed for clear error. *Id*. This Court reviews constitutional issues de novo. *People v Eaton*, 241 Mich App 459, 461; 617 NW2d 363 (2000).

The record demonstrated that there was adequate basis to support the stop and search of defendant's vehicle. *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968); *People v Whalen*, 390 Mich 672, 681-682; 213 NW2d 116 (1973). The type of intrusion authorized by the United States Supreme Court decision in *Terry* has been extended to permit investigative stops under various circumstances for what has been called "special law enforcement needs." *People v Nelson*, 443 Mich 626, 631; 505 NW2d 266 (1993). In order for law enforcement officers to make a constitutionally proper investigative stop, they must satisfy the two-part test set forth in

[1] The stop and search of the vehicle lead to the discovery of marijuana. Defendant was then arrested and taken to the police station. At the station, a search of defendant yielded the cocaine underlying this charge.

United States v Cortez, 449 US 411; 101 S Ct 690; 66 L Ed 2d 621 (1981). *Nelson, supra*, 443 Mich 632. First, the totality of the circumstances as understood and interpreted by law enforcement officers, not legal scholars, must yield a particular suspicion that the individual being investigated has been, is, or is about to be engaged in criminal activity. *Cortez, supra*, 449 US 418; *People v Faucett*, 442 Mich 153, 168; 499 NW2d 764 (1993). Second, the suspicion must be reasonable and articulable. *Terry, supra*, 392 US 21. In other words, an investigative stop is justified if the police have a particularized suspicion, based on objective observations, that the person stopped has been engaged, is engaged or is about to engage is some type of criminal activity. *People v Shabaz*, 424 Mich 42, 57-58; 378 NW2d 451 (1985). The authority and limitations associated with investigative stops apply to vehicles as well as people. *United States v Sharpe*, 470 US 675, 682; 105 S Ct 1568; 84 L Ed 2d 605 (1985). The *Cortez Court* warned against overly technical reviews of a police officer's common-sense assessment of the probability that criminal activity is afoot. *Faucett, supra*, 442 Mich 168.

In analyzing the totality of the circumstances, common sense and everyday life experiences predominate over uncompromising standards. *People v Yeoman*, 218 Mich App 406, 410; 554 NW2d 577 (1996). In *Whalen, supra*, at 682, the Michigan Supreme Court set forth a four-pronged test to determine the reasonableness of an investigatory stop of a motor vehicle:

> 1. Reasonableness is the test that is to be applied for both the stop of, and the search of moving motor vehicles.
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> 2. The reasonableness will be determined from the facts and circumstances of each case.
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> 3. Fewer foundation facts are necessary to support a finding of reasonableness when moving vehicles are involved, than if a house or a home were involved.
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> 4. A stop of a motor vehicle for investigatory purposes may be based upon fewer facts than those necessary to support a finding of reasonableness where both a stop and a search is conducted by the police.

Here, under the totality of the circumstances, Romulus Police Detective Sergeant Mike Ondejko's testimony at the suppression hearing showed that the officers had reason to believe that defendant was en route to his frequented location at the GM parking lot in Romulus to sell illegal drugs. After receiving information that a green Blazer had been observed in the parking lot on paydays and that it appeared that workers were purchasing cocaine from the Blazer, officers set up surveillance on successive paydays (Thursdays). On each occasion, the officers observed activity consistent with the sale of narcotics. The Blazer would park in the lot, employees would approach the vehicle and stay a short time and then leave. After about fifteen minutes, the Blazer would leave. On one occasion, officers observed a person get into the vehicle with defendant who then drove to another area of the lot. A baggie was tossed out of the window and retrieved by police. It fielded positive for cocaine. On Thursday, January 13, 2000, the officers set up their fifth and final surveillance of defendant. The officers knew from the previous surveillances that defendant used westbound Ecorse Road to reach the GM plant in Romulus. They also knew that there was a certain point on that road where a driver would either head toward the GM facility or continue westbound. The officers decided that if defendant took

that route, and reached that point, then they would initiate a traffic stop.

Defendant claims that the stop was unjustified because the officers did not personally see or know that there were controlled substances in defendant's car at the time he was stopped, and there was no evidence that he was engaged in or was about to engage in criminal activity at the time he was stopped, because it was not the usual time defendant frequented the parking lot to sell drugs. This argument is without merit. Defendant does not provide any authority to support his claim that the officers were required to see defendant place controlled substances in his vehicle. In each of the previous four surveillances, defendant appeared to have conducted narcotics transactions, and the police inference that he was going to the parking lot for that purpose was reasonable. The police were not required to disregard the indications that defendant was going to the parking lot to sell drugs simply because he had, in the past, followed a different schedule.

Furthermore, in analyzing the totality of the circumstances, the law enforcement officers are permitted 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." *Nelson, supra*, 443 Mich 636. Therefore, deference should be given to Ondejko, a law enforcement officer of twenty years, fifteen of which were spent working in the narcotics division at the Romulus Police Department, who testified that defendant's behavior was consistent with the behavior of persons engaging in narcotics transactions. The short, quick stops defendant made, people getting in and out of the vehicle, a long trip in severe winter weather to Flint to meet with a woman for less than a minute, and a baggie being thrown out of the vehicle, all indicated to Ondejko that narcotics transactions and packaging activities were being carried out from defendant's vehicle.

Based on the above, we conclude that, under the totality of the circumstances, the Romulus police officers' investigatory stop of defendant's vehicle was supported by reasonable suspicion that defendant was about to engage in narcotics transactions at the GM plant in Romulus. Because fewer foundational facts are necessary to support a finding of reasonableness when moving vehicles are involved, *Christie*, *supra*, 206 Mich App 308-309, the trial court erred in concluding that there was no reason to stop defendant's car. We reverse the decision of the trial court, and remand the case for trial.

Reversed and remanded. We do not retain jurisdiction.

/s/ Helene N. White
/s/ William C. Whitbeck
/s/ Donald E. Holbrook, Jr.