

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JUAN DUPREE COWANS,

Defendant-Appellant.

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UNPUBLISHED

June 17, 2004

No. 245589

Jackson Circuit Court

LC No. 01-003889-FH

Before: Neff, P.J., and Zahra and Murray, JJ.

MEMORANDUM.

Defendant appeals as of right his convictions of resisting and obstructing a police officer, MCL 750.479, and carrying a concealed weapon, MCL 750.227, entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A police officer approached defendant and expressed concern about the manner in which defendant had crossed the street (i.e., jaywalking in front of an oncoming vehicle). The officer inquired if defendant had outstanding warrants, and when defendant replied that he did not, asked for defendant's identification so he could run a LEIN check. Defendant gave the officer his identification. The officer learned that defendant had outstanding warrants, and tried to place him under arrest. Defendant fled, and was seen pulling an object from under his shirt and tossing it in the bushes. A handgun was found in the bushes. Defendant was ultimately apprehended.

A brief investigatory stop short of arrest is permitted if a peace officer has a reasonable suspicion that criminal activity is afoot. *Terry v Ohio*, 392 US 1, 16; 88 S Ct 1868; 20 L Ed 2d 889 (1968). An investigatory stop must be justified by a particularized suspicion, based on some objective manifestation, that a person is, has been, or is about to be engaged in some type of criminal activity. *People v Shields*, 200 Mich App 554, 557; 504 NW2d 711 (1993).

A "seizure" occurs within the meaning of the Fourth Amendment if, in light of all the circumstances surrounding an encounter with the police, a reasonable person would have believed that he was not free to leave. An investigatory stop constitutes a seizure and requires specific and articulable facts sufficient to give rise to a reasonable suspicion that the person detained has committed, is committing, or is about to commit a crime. When an officer approaches a person and seeks his voluntary cooperation through noncoercive questioning, there has been no restraint on the person's liberty and no seizure has occurred. *People v Shankle*, 227 Mich App 690, 693; 577 NW2d 471 (1998).

Defendant did not challenge the constitutionality of the encounter in the trial court; therefore, absent plain error, he is not entitled to relief. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).<sup>1</sup> Whether an encounter is consensual depends on an officer's objective actions rather than on his subjective suspicions. *United States v Waldon*, 206 F3d 597, 603 (CA 6, 2000). No evidence showed either that the officer told defendant he was required to surrender his identification, or that defendant was not free to end the encounter. *People v Frohriep*, 247 Mich App 692, 701; 637 NW2d 562 (2001). Defendant has not established that the encounter was an illegal investigatory stop. *Shankle, supra*. No plain error occurred. *Carines, supra*.

Affirmed.

/s/ Janet T. Neff  
/s/ Brian K. Zahra  
/s/ Christopher M. Murray

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<sup>1</sup> At the preliminary examination defendant made an oral motion challenging the legality of the encounter. The district court, without holding an evidentiary hearing, ruled that the encounter was constitutional. Defendant did not renew the challenge in the trial court.