

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

EDWARD OMARI GAMBLE,

Defendant-Appellee.

UNPUBLISHED

August 9, 2005

No. 252608

Oakland Circuit Court

LC No. 2002-187918-FH

Before: Cooper, P.J., and Fort Hood and R. S. Gribbs*, JJ.

PER CURIAM.

The prosecution appeals as of right the trial court's dismissal of a charge of possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), brought against defendant Edward Omari Gamble. The trial court granted defendant's motion to suppress any evidence resulting from his investigatory stop and subsequently dismissed the case. We reverse and remand for further proceedings consistent with this opinion. This case is being decided without oral argument pursuant to MCR 7.214(E).

Authorities intercepted a package containing marijuana at the Southfield Federal Express facility. The package was filled with laundry detergent to mask the odor of the marijuana. The package was addressed to James Henderson, and was shipped from a "source area" for narcotics. An undercover agent delivered the package to the apartment to which it was addressed. Defendant denied that he was the addressee. However, defendant stated that other people "lived there," and signed for and accepted the package. Approximately fifteen minutes later, defendant left the apartment with the package and placed it in his vehicle. Officers stopped and subsequently arrested him. The trial court found that the officers lacked reasonable suspicion to stop defendant, as they had no evidence that defendant knew the package contained marijuana. The court suppressed the evidence and subsequently dismissed the charge.

We agree with the prosecution's contention that the trial court erroneously determined that the officers lacked reasonable suspicion to stop defendant. We review factual findings in a

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

suppression hearing for clear error.¹ We review the application of constitutional standards de novo.²

A brief detention does not violate the Fourth Amendment if the officer has a reasonably articulable suspicion that criminal activity is afoot. Whether an officer has a reasonable suspicion to make such an investigatory stop is determined case by case, on the basis of an analysis of the totality of the facts and circumstances. A determination regarding whether a reasonable suspicion exists must be based on commonsense judgments and inferences about human behavior.^[3]

“Reasonable suspicion entails something more than an inchoate or unparticularized suspicion or ‘hunch,’ but less than the level of suspicion required for probable cause.”⁴ “[T]he reasonable suspicion needed for such stops ‘requires a showing considerably less than preponderance of the evidence.’”⁵ “[T]he police must have a particularized suspicion, based on an objective observation, that the person stopped has been, is, or is about to be engaged in criminal wrongdoing.”⁶

Although defendant denied being the addressee, he signed for and accepted the package, which the officers knew contained marijuana. While the officers may have lacked sufficient information regarding defendant’s knowledge of the package’s contents, they did have sufficient information that defendant possessed the package. Accordingly, the officers had reasonable suspicion to stop defendant. Whether defendant actually knew that the package contained marijuana is a matter for the trier of fact.⁷ Accordingly, the trial court improperly suppressed the evidence collected during the investigatory stop and dismissed the charge against defendant.

¹ *People v Jenkins*, 472 Mich 26, 31; 691 NW2d 759 (2005) (citations omitted).

² *Id.*

³ *Id.* at 32 (citations and internal quotation marks omitted).]

⁴ *People v Champion*, 452 Mich 92, 98; 549 NW2d 849 (1996), citing *United States v Sokolow*, 490 US 1; 109 S Ct 1581; 104 L Ed 2d 1 (1989).

⁵ *People v Oliver*, 464 Mich 184, 202-203; 627 NW2d 297 (2001), quoting *Illinois v Wardlow*, 528 US 119, 123; 120 S Ct 673; 145 L Ed 2d 570 (2000). See also *Sokolow*, *supra* at 7 (a “reasonable suspicion” is “less than proof of wrongdoing by a preponderance of the evidence”) (internal quotation marks omitted).

⁶ *People v Shabaz*, 424 Mich 42, 59; 378 NW2d 451 (1985) (emphasis added). See also *Champion*, *supra* at 98.

⁷ See *Oliver*, *supra* at 203-204 (the possibility of innocent explanations for a defendant’s actions does not negate reasonable suspicion for an investigatory stop).

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

/s/ Jessica R. Cooper
/s/ Karen M. Fort Hood
/s/ Roman S. Gibbs