STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 30, 2010
v	No. 293871 Oakland Circuit Court
PATEDGRY ANTHONY YOUNG, Defendant-Appellant.	LC No. 2006-212173-FH

Before: M. J. KELLY, P.J., and K. F. KELLY and BORRELLO, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted from his conditional plea-based conviction of possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), for which he was sentenced to 18 months' probation, with 60 days to be served in jail. For the reasons set forth in this opinion, we affirm the trial court, albeit on different grounds. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

From the outset, we note that the trial court failed to resolve many of the factual discrepancies presented in this case and based its decision on a statement in defendant's memorandum of law rather than on any record testimony. Generally, a trial court is required to make findings of fact and a statement of law in any contested matter and the failure to do so "prevents this Court from making a final determination on the . . . question." *People v LaBate*, 122 Mich App 644, 647-648; 332 NW2d 555 (1983). However, in *People v Shields*, 200 Mich App 554, 558-559; 504 NW2d 711 (1993), lv den 444 Mich 945 (1994), this Court stated that while "it is always preferable for purposes of appellate review that a trial court explain its reasoning and state its findings of fact with respect to pretrial motions," it is not required by law to do so. *LaBate* is not precedentially binding, whereas we are bound by this Court's decision in *Shields*. MCR 7.215(J)(1). Even if we were to conclude that *Shields* is distinguishable, we agree with this Court's assertion in *Shileds* that *Labate* was wrongly decided. 200 Mich App at 559.

In this case, not only did the trial court fail to make any findings, its decision was not even based on the evidence presented at the hearing. Instead, it relied on a statement in defendant's memorandum of law that was consistent with the officers' testimony but contradictory to defendant's testimony. However, the principal dispute involved the question whether defendant was seized and the record is sufficient to enable this Court to conclude that even if defendant was seized, the seizure was justified. Therefore, remand for further explanation is not necessary because it would not facilitate appellate review in this case. *People*

v Jackson, 390 Mich 621, 627 n 3; 212 NW2d 918 (1973); *People v Vaughn*, 186 Mich App 376, 384; 465 NW2d 365 (1990); *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992).

Defendant argues that the trial court erred in denying his motion to suppress the evidence. This Court reviews a trial court's factual findings at a suppression hearing for clear error, but reviews questions of law and the ruling on a motion to suppress de novo. *People v Waclawski*, 286 Mich App 634, 693; 780 NW2d 321 (2009).

"The Fourth Amendment of the United States Constitution and its counterpart in the Michigan Constitution guarantee the right of persons to be secure against unreasonable searches and seizures." *People v Kazmierczak*, 461 Mich 411, 417; 605 NW2d 667 (2000). "When an officer approaches a person and seeks voluntary cooperation through noncoercive questioning, there is no restraint on that person's liberty, and the person is not seized." *People v Jenkins*, 472 Mich 26, 33; 691 NW2d 759 (2005). "An investigatory stop, which is limited to a brief and nonintrusive detention, constitutes a Fourth Amendment seizure." *People v Jones*, 260 Mich App 424, 429; 678 NW2d 627 (2004).

Defendant argues that the trial court erred in finding that he was never seized when the police approached him in a CVS store parking lot. "A person is 'seized' within the meaning of the Fourth Amendment if, 'in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.'" *People v Armendarez*, 188 Mich App 61, 69; 468 NW2d 893 (1991), quoting *Michigan v Chesternut*, 486 US 567, 573; 108 S Ct 1975; 100 L Ed 2d 565 (1988). "[T]o constitute a seizure for purposes of the Fourth Amendment there must be either the application of physical force or the submission by the suspect to an officer's show of authority." *People v Lewis*, 199 Mich App 556, 559; 502 NW2d 363 (1993). A police approach for questioning on the street does not amount to an investigatory stop "unless there exist intimidating circumstances leading the person to reasonably believe he was not free to leave or the person rebuffs the police officer by refusing to answer and walking away." *People v Daniels*, 160 Mich App 614, 619; 408 NW2d 398 (1987).

The trial court erred in finding that defendant was not seized when the police approached him in the drugstore parking lot. That finding was based on an allegation in defendant's motion for an evidentiary hearing, which conflicted with defendant's testimony at the hearing. Nevertheless, even assuming that defendant was seized because the police parked their cars in such a way as to prevent defendant from driving away, the seizure was not unlawful.

A police officer may briefly stop and detain a person to investigate possible criminal activity if he has a reasonable suspicion based on specific and articulable facts that the person detained has committed or is committing a crime. *People v Shankle*, 227 Mich App 690, 693; 577 NW2d 471 (1998). An officer's reasonable suspicion may be based on information obtained from another officer. *People v Chambers*, 195 Mich App 118, 122; 489 NW2d 168 (1992). An officer's reasonable suspicion may also be based on information obtained from an anonymous person. *People v Tooks*, 403 Mich 568, 577; 271 NW2d 503 (1978); *People v Horton*, 283 Mich App 105, 113; 767 NW2d 672 (2009). For the suspicion to be reasonable, the information must be reliable. *Tooks*, 403 Mich at 577. The information "is entitled to a finding of reliability when the information is sufficiently detailed and is corroborated within a reasonable period of time by the officers' own observations." *Id.*

The police received a tip from a confidential informant (CI) that defendant would be delivering five pounds of marijuana. Officer Bauman testified that he had worked with the CI in the past and found the CI to be credible and reliable. The CI gave defendant's name and physical description, and stated that defendant would be driving from a particular address on Westbrook in Detroit to a CVS drugstore in Southfield to make the delivery. Officer Bauman confirmed that a meeting between the CI and defendant had been arranged by listening in on their telephone conversations. Surveillance confirmed that the person described by the CI drove to the Westbrook address and then drove from there directly to the CVS, where he sat in his vehicle in the parking lot as if waiting for the CI to appear. Given the totality of the circumstances, the information available to the police clearly provided reasonable suspicion to believe that defendant was in possession of marijuana. Thus, the police could briefly detain defendant for further investigation.

Officer Gorski testified that when he approached defendant, he looked inside defendant's car and saw an open bag containing what appeared to be marijuana. "The plain-view exception to the warrant requirement allows a police officer to seize items in plain view if the officer is lawfully in the position to have that view and the evidence is obviously incriminatory." *People v Galloway*, 259 Mich App 634, 639; 675 NW2d 883 (2003). Possession with intent to deliver less than five kilos of marijuana is a felony, MCL 333.7403(2)(d)(iii), and simple possession of marijuana is a misdemeanor punishable by imprisonment for up to one year. MCL 333.7403(2)(d). A police officer can arrest a person without a warrant if he has reasonable cause to believe that a misdemeanor punishable by imprisonment for more than 92 days, or a felony, has been committed and reasonable cause to believe that the person committed it. MCL 764.15(1)(d).

Once the police observed the marijuana in defendant's car in plain view during a proper investigatory stop, they had probable cause to arrest defendant. Further, they could properly seize the marijuana pursuant to the plain view exception to the warrant requirement. Therefore, the seizure of defendant and the marijuana, and defendant's subsequent arrest, were constitutionally valid. This Court will not reverse where the trial court reaches the right result for the wrong reason. *People v Lyon*, 227 Mich App 599, 612-613; 577 NW2d 124 (1998).

Affirmed.

/s/ Michael J. Kelly
/s/ Kirsten Frank Kelly
/s/ Stephen L. Borrello