

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

KENNETH DEWAYNE ROBERTS,

Defendant-Appellee.

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UNPUBLISHED

December 28, 2010

No. 290094

Ingham Circuit Court

LC No. 08-000838-FH

Before: FORT HOOD, P.J., and BORRELLO and STEPHENS, JJ.

PER CURIAM.

The prosecution appeals as of right from the trial court's order granting defendant's motion to suppress evidence and to dismiss the charge of carrying a concealed weapon, MCL 750.227. We reverse and remand for proceedings consistent with this opinion.

Both the United States and Michigan Constitutions guarantee the right against unreasonable searches and seizures. US Const, Am IV, Const 1963, art 1, § 11. The lawfulness of a search or seizure is contingent upon its reasonableness. *People v Beuschlein*, 245 Mich App 744, 749; 630 NW2d 921 (2001). The reasonableness depends on the totality of the circumstances. *People v Custer*, 465 Mich 319, 328; 630 NW2d 870 (2001). A search or seizure conducted without a warrant is unreasonable unless a recognized exception to the warrant requirement applies. *People v Tierney*, 266 Mich App 687, 704; 703 NW2d 204 (2005). A valid exception to the warrant requirement occurs when a seizure of an item in plain view occurs. *People v Chowdhury*, 285 Mich App 509, 516; 775 NW2d 845 (2009). Although the exceptions do not require a warrant, the action must be reasonable and based on probable cause. *Id.*

An unlawful detention or illegal arrest does not necessarily result in the exclusion of evidence. "The exclusionary rule is a harsh remedy designed to sanction and deter police misconduct where it has resulted in a violation of constitutional rights" ... and suppression "should be used only as a last resort." *People v Frazier*, 478 Mich 231, 247; 733 NW2d 713 (2007) (further quotations and citations omitted). To determine whether exclusion of evidence is appropriate, the court must evaluate the circumstances of the case in light of the policy served by the exclusionary rule. *Id.* at 247-249. Suppression of evidence is proper only when an unlawful detention is employed as a tool to procure any type of evidence from a detainee. *People v Corr*, 287 Mich App 499, 508-509; 788 NW2d 860 (2010). Additionally, evidence need not be excluded if police would have inevitably discovered the evidence regardless of the unconstitutional conduct. *People v Stevens (After Remand)*, 460 Mich 626, 637; 597 NW2d 53

(1999). There is no Fourth Amendment protection for what a person knowingly exposes to the public regardless of whether the exposed object is examined or illuminated by artificial means. *People v Hulsey*, 176 Mich App 566, 569; 440 NW2d 59 (1989).

Police officers were traveling through an apartment complex when they approached defendant who was near his vehicle. The officers testified that defendant saw them, and that he engaged in a furtive gesture while leaning into his vehicle. Although it was approximately 12:30 a.m., lights in the complex illuminated the parking lot. The owner of the apartment complex had obtained a “letter of trespass.” This document allowed police officers to arrest individuals who were not occupants of the apartment complex. The police officers made contact with defendant, who acknowledged that he did not reside there. Defendant asserted that he was waiting for someone. Officers could see into the vehicle that there was a box of Ziploc bags on the backseat. In his testimony, defendant acknowledged that there was a box of Baggies on the backseat. One of the two police officers testified that, in his eighteen months on the job, he had been called to the apartment complex on 50 to 60 occasions to address complaints of drugs, fights, weapons, and trespassing. Defendant agreed to a search of his person, but refused the officers request for a search of the vehicle.

The testimony at the evidentiary hearing diverged after this point. The officers testified that they placed defendant in the back of the police vehicle for safety reasons while they waited for the arrival of a drug-sniffing dog. Defendant testified that he was handcuffed and placed in the police vehicle for ten to fifteen minutes while officers ran a LEIN check and spoke to occupants of the apartment complex. One police officer testified that he was running a check on defendant when the other officer returned to the vehicle and advised that there was a gun visible from the side of the vehicle. When asked if the gun was real or fake, defendant did not answer. Although defendant asserted that the officers handcuffed and detained him for ten to fifteen minutes, the officers asserted that they were merely continuing to investigate the trespass and only took approximately two minutes to discover the gun sticking out from under the seat of the vehicle.

The trial court did not resolve the factual disparity regarding the timing of the detention and the type of confinement. Rather, the trial court merely held that there “wasn’t adequate reasonable suspicion of a crime” and dismissed the charge without examining whether the harsh remedy of exclusion of evidence was appropriate.

The trial court did not make factual findings and resolve the credibility dispute. However, even assuming *without deciding* that the detention was improper, the trial court erred in ordering the suppression of evidence. As previously stated, the suppression of evidence is proper only when an unlawful detention is employed as a tool to procure any type of evidence from a detainee. *Corr*, 287 Mich App at 508-509. Additionally, evidence is not excluded if police would have inevitably discovered the evidence regardless of the unconstitutional conduct. *Stevens (After Remand)*, 460 Mich at 637. Protection is not given to an object that is exposed to the public when illuminated by artificial means. *Hulsey*, 176 Mich App at 569. In the present case, the officers were able to view the gun sticking out from under the seat, like the box of Baggies, due to the lighting in the parking lot. The officers discovered the item before the canine unit arrived at the scene to sniff the vehicle. Under the circumstances, suppression of the evidence was unwarranted. *Frazier*, 478 Mich at 247.

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

/s/ Karen M. Fort Hood