

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

UNPUBLISHED
October 13, 2011

v

EMANUEL THOMPSON,

Defendant-Appellee.

No. 298974
Wayne Circuit Court
LC No. 10-000937

Before: MURPHY, C.J., and TALBOT and MURRAY, JJ.

PER CURIAM.

The prosecution appeals by leave granted the circuit court's order denying the prosecutor's appeal of the district court's ruling that dismissed the charges against defendant after the district court found a Fourth Amendment violation and suppressed firearm evidence. Defendant had been charged with carrying a concealed weapon (CCW), MCL 750.227. We reverse and remand.

On December 13, 2009, a police officer with the Detroit Police Department was on routine patrol in the area of Seven Mile Road and Hayes Road in Detroit. The officer observed defendant, along with some other young men, walking in the middle of Seven Mile Road, despite the existence of sidewalks. According to the officer, the young men were walking "almost in a jay walking type manner," given that the young men had enough time to completely cross the street and reach the sidewalk, yet remained in the middle of the road. The officer testified that, although defendant may have been walking towards a gas station located across the street, he then passed the station and continued walking in the street. The officer stopped to investigate the men for a possible violation of a Detroit ordinance that prohibits walking in the street where sidewalks are provided.¹ As the officer exited his vehicle and approached defendant, he noticed

¹ Detroit City Ordinance § 55-12-4 provides that "[w]here sidewalks are provided, it shall be unlawful for pedestrians to walk upon the main traveled portion of the highway." We also note that MCL 257.655 provides:

(1) Where sidewalks are provided, a pedestrian shall not walk upon the main traveled portion of the highway. Where sidewalks are not provided,

that defendant was moving his hands inside his pockets trying to adjust something. The officer suspected that defendant had a firearm because, in his experience, when someone made movements similar to those of defendant, it usually indicated that a firearm was present on the person. At that point, the officer, concerned that defendant may have a firearm, asked to see defendant's hands. Defendant replied, "I found it." The officer then patted defendant down for the officer's safety as well as the safety of his partner. The officer found a handgun in defendant's waistband. The officer's partner then took the gun from defendant. Defendant did not produce a CCW license, and he continued to proclaim that he had found the gun. The district court excluded the evidence, finding that an unconstitutional search and seizure had occurred under the Fourth Amendment. The district court proceeded to dismiss the CCW charge. The circuit court affirmed the district court's ruling. The prosecutor appeals by leave granted.

A trial court's findings at a suppression hearing are reviewed for clear error. *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005). "But the application of constitutional standards regarding searches and seizures to essentially uncontested facts is entitled to less deference; for this reason, we review de novo the trial court's ultimate ruling on the motion to suppress." *Id.* The Fourth Amendment of the United States Constitution and Const 1963, art 1, §11, secure the right of the people to be free from unreasonable searches and seizures. *People v Brown*, 279 Mich App 116, 130; 755 NW2d 664 (2008). The touchstone of any Fourth Amendment analysis is reasonableness, and reasonableness is measured by examination of the totality of the circumstances. *Williams*, 472 Mich at 314.

"A police officer who witnesses a civil infraction may stop and temporarily detain the offender for the purpose of issuing a written citation." *People v Chapo*, 283 Mich App 360, 366; 770 NW2d 68 (2009). Whether reasons other than a civil infraction would justify an officer's action is irrelevant. *Id.* "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). A police officer is free to approach an individual and seek voluntary cooperation. *People v Shankle*, 227 Mich App 690, 693; 577 NW2d 471 (1998). An officer may briefly detain a defendant without offending the Fourth Amendment if the officer can articulate facts giving rise to reasonable suspicion that criminal activity had been afoot. *Jenkins*, 472 Mich at 32. It is an objective analysis of the facts and circumstances surrounding a stop, and not an examination of an officer's subjective intent, that is appropriate for purposes of determining whether a police stop was a pretext to search for evidence. *People v Haney*, 192 Mich App 207, 210; 480 NW2d 322 (1991).

Here, the officer had the authority to stop and temporarily detain defendant because of the ordinance violation that occurred in the officer's presence. Moreover, regardless of the ordinance, the officer was simply approaching defendant when defendant made the furtive

pedestrians shall, when practicable, walk on the left side of the highway facing traffic which passes nearest.

(2) A person who violates this section is responsible for a civil infraction.

gesture of moving his hands inside his pockets in an attempt to adjust something, which movements the officer believed, based on experience, suggested the presence of a firearm. Up to this point, there had been no stop or seizure of defendant; no coercive questioning had taken place. When a “stop reveals a new set of circumstances, an officer is justified in extending the detention long enough to resolve the suspicion raised.” *Williams*, 472 Mich at 315. Again, there had not even been a stop or detention when the officer observed defendant’s suspicious hand movements, and even assuming that a seizure had taken place at that point, the ordinance violation justified the stop. “An officer . . . may perform a limited patdown search for weapons if the officer has reasonable suspicion that the individual stopped for questioning is armed and thus poses a danger to the officer.” *People v Champion*, 452 Mich 92, 99; 549 NW2d 849 (1996). Given that defendant’s hands were thrust inside his pockets as the officer approached defendant, we conclude that reasonable suspicion existed, justifying the officer’s actions in asking defendant to show his hands and in patting defendant down, which patdown was also supported by defendant’s remark, “I found it.” Overall, the police officer’s actions were entirely reasonable under the circumstances.

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

/s/ William B. Murphy
/s/ Michael J. Talbot
/s/ Christopher M. Murray