STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 31, 2013
v	No. 307783 Kalamazoo Circuit Court
METHEMBE NIGEL MPOFU, Defendant-Appellant.	LC No. 2011-000680-FH

Before: SAWYER, P.J., and MARKEY and M. J. KELLY, JJ.

PER CURIAM.

Defendant appeals by right his convictions of operating a motor vehicle while intoxicated, third offense, MCL 257.625(1) and (9), and driving with a suspended license, MCL 257.904. The trial court sentenced defendant to concurrent terms of 45 days in jail. We affirm.

Defendant was observed in the driver's seat of a parked vehicle. A door was open, and the motor was running. Defendant smelled of alcohol, was unresponsive, and there were intoxicants in his car. When he was roused, defendant walked away from the scene. The police detained defendant and arrested him for the crimes of which he was convicted.

Defendant first argues that his arrest was unlawful, and the trial court erred in denying his motion to suppress evidence. We disagree.

"This Court's review of a lower court's factual findings in a suppression hearing is limited to clear error and those findings will be affirmed unless we are left with a definite and firm conviction that a mistake was made." *People v Lewis*, 251 Mich App 58, 67; 649 NW2d 792 (2002). But we review de novo the trial court's application of constitutional standards to the facts of the case. *People v Martin*, 271 Mich App 280, 297; 721 NW2d 815 (2006).

"Both the United States Constitution and the Michigan Constitution guarantee to the people the right to be free from unreasonable searches and seizures." *People v Dagwan*, 269 Mich App 338, 342; 711 NW2d 386 (2005); US Const, Am IV; Const 1963, art 1, § 11. But each constitution forbids only unreasonable search and seizures. *Lewis*, 251 Mich App at 68. A person is "seized" under the Fourth Amendment when an "officer has restrained the person's individual freedom." *Id.* at 69. In general, the seizure of a person is constitutionally reasonable only if based on probable cause. *Id.* A more limited detention may also be justified based on reasonable suspicion that a person has committed or is about to commit a crime. *Id.*; *Terry v*

Ohio, 329 US 1, 22, 30-31; 88 S Ct 1868; 20 L Ed 2d 889 (1968). As explained in *People v Jenkins*, 472 Mich 26, 32; 691 NW2d 759 (2005) (citations omitted):

> Under certain circumstances, a police officer may approach and temporarily detain a person for the purpose of investigating possible criminal behavior even though there is no probable cause to support an arrest. 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.

An investigatory stop under *Terry* must be "'reasonably related in scope to the circumstances which justified the interference in the first place.'" *People v Williams*, 472 Mich 308, 314; 696 NW2d 636 (2005), quoting *Terry*, 392 US at 20. When reviewing the reasonableness of a *Terry* stop, it is necessary to consider both "the length and intrusiveness of the stop and detention." *United States v Hensley*, 469 US 221, 235; 105 S Ct 675; 83 L Ed 2d 604 (1985). "[A]n investigative detention must . . . last no longer than is necessary to effectuate the purpose of the stop." *Florida v Royer*, 460 US 491, 500; 103 S Ct 1319; 75 L Ed 2d 229 (1983). In sum, a *Terry* stop must be predicated on reasonable suspicion and remain reasonable in scope and duration while the person is detained. *Williams*, 472 Mich at 314-315.

Here, the record demonstrates that Deputy Amber Combs was aware that: (1) "there was a male in a vehicle who was unresponsive or passed out and [a] witness had said that it smelled like he had been drinking;" (2) the suspect was then running away from the scene; (3) defendant matched the description of the suspect given to her by dispatch; and (4) Combs noticed that defendant had bloodshot eyes and smelled of intoxicants. Based on the totality of these "specific and articulable facts," *Terry*, 392 US at 21, we find no clear error in the trial court's determination that Combs had reasonable suspicion to make an investigatory stop.

Furthermore, we find no clear error in the trial court's determination that the detention was reasonable in scope and duration. Contrary to defendant's assertions that being handcuffed, frisked, and placed in Combs's police vehicle violated his Fourth Amendment rights, handcuffing a person does not necessarily transform a reasonable investigatory detention into an arrest. *People v Zuccarini*, 172 Mich App 11, 14; 431 NW2d 446 (1988). Combs handcuffed defendant because "he fled the scene." In light of the surrounding circumstances, handcuffing defendant and placing him in the back of the police vehicle so he could not flee was the "least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time." *Royer*, 460 US at 500. Additionally, with regard to the approximately thirty-minute duration of the detention, Combs testified that she met with and took statements from several witnesses shortly after she placed defendant in her vehicle and had a fellow officer check to see if keys found on defendant matched the vehicle in which he was originally found. Based on information Combs gathered during this time, she placed defendant under arrest. Because Combs was diligently pursuing a means of investigation to confirm or dispel her suspicion, the trial court did not err in finding that the scope and duration of the stop were reasonable and defendant's argument fails. See, e.g., *People v Yeoman*, 218 Mich App 406, 413; 554 NW2d 577 (1996) (the investigating officer was diligently pursuing an investigation during a forty-five minute detention).

Next, defendant argues that the trial court erred in denying his motion for a mistrial after Combs gave testimony implying that defendant had a criminal history. We disagree. "We review for an abuse of discretion a trial court's decision regarding a motion for a mistrial." *People v Schaw*, 288 Mich App 231, 236; 791 NW2d 743 (2010). A trial court abuses its discretion when it acts outside the range of reasonable and principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

"A trial court should grant a mistrial 'only for an irregularity that is prejudicial to the rights of the defendant and impairs his ability to get a fair trial.'" *Schaw*, 288 Mich App at 236, quoting *People v Haywood*, 209 Mich App 217, 228; 530 NW2d 497 (1995). Generally, "an unresponsive, volunteered answer to a proper question is not grounds for the granting of a mistrial." *Haywood*, 209 Mich App at 228. But this Court will scrutinize remarks made by police witnesses because police "have a special obligation not to venture into . . . forbidden areas." *People v Holly*, 129 Mich App 405, 415-416; 341 NW2d 823 (1983).

Defendant's objection was based on the following exchange between the prosecutor and Combs during the trial:

Q. For what crimes did you arrest the defendant?

A. Operating while intoxicated third and driving while license revoked.

Q. So operating while intoxicated.

The trial court ultimately concluded that based on the brevity and ambiguity of the comment, a mistrial was not warranted. We agree.

Here, the testimony given by Combs only raised an inference that defendant may have a prior criminal record. See *People v Steiner*, 136 Mich App 187, 196; 355 NW2d 884 (1984) (refusing to grant a mistrial where the arresting officers testified that they knew defendant from previous encounters, "raising an inference that defendant had a prior criminal record."). Combs said "third" not "third offense" and it is uncertain that the jury even understood what "third" referred to. Moreover, "[a] trial court's denial of a motion for mistrial will not be reversed on appeal absent an affirmative showing of prejudice." *People v White*, 139 Mich App 484, 500; 363 NW2d 702 (1984). Defendant is unable to show prejudice because the evidence of guilt offered at trial was overwhelming. Three witnesses saw defendant passed out in the driver's side of the vehicle; two witnesses confirmed that the car was in gear and running; defendant concedes he was drinking that evening, and his blood alcohol level was .2 percent. As such, reversal is not warranted.

We affirm.

/s/ David H. Sawyer
/s/ Jane E. Markey
/s/ Michael J. Kelly