STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED December 6, 2012
v	No. 310781 Ingham Circuit Court
ERIC NEIL REYNOLDS, Defendant-Appellee.	LC No. 12-000281-FH

Before: CAVANAGH, P.J., and HOEKSTRA and SHAPIRO, JJ.

PER CURIAM.

Plaintiff appeals by right a trial court order that dismissed the criminal charge against defendant. Defendant had been charged with resisting and obstructing a police officer causing injury, MCL 750.81d(2). On appeal, plaintiff argues that the trial court erred in granting defendant's motion to dismiss because the arresting officer possessed a reasonable suspicion that defendant was in the process of committing a crime when he was seized. We affirm because the evidence was insufficient to support a reasonable suspicion of criminal activity.

On October 11, 2011, at approximately 10:24 p.m., Mason Police Officer Mark Reckling was driving a fully marked police vehicle on northbound Cedar Street in Mason, Michigan. Reckling observed a male walking through a vacant lot, from a distance he estimated to be "under 100 yards." Reckling had noticed graffiti in the area on a prior occasion, but admitted he could have seen the graffiti at any time during his previous six years as a police officer. Reckling has never arrested anyone for graffiti, and testified that he knew of no police reports of graffiti in the area.

Reckling testified that he turned his vehicle around and entered the poorly lit parking lot of Hebb's Inn, located immediately south of the vacant lot. Defendant was walking into the parking lot and, according to Reckling, he "then stopped, looked directly at me, and then began to run." Reckling saw defendant crouch behind a red pickup truck. Reckling approached defendant and asked him what he was doing. Defendant responded that he thought Reckling was someone else, a "friend of his." Reckling testified that defendant's speech was "slightly slurred." Reckling asked defendant for identification, and defendant told him he did not have any identification and then began to walk away. Reckling told defendant to "stop" and then grabbed the back of defendant's shirt. A struggle ensued that resulted in injuries to both defendant and Reckling. Defendant was charged and bound over to circuit court. Defendant

moved the circuit court to suppress evidence obtained through an illegal seizure. The circuit court dismissed the charge, treating the motion as a motion to quash.[1]

"A circuit court's decision to quash an information is reviewed for abuse of discretion, to determine whether the district court abused its discretion in binding over a defendant." *People v Hotrum*, 244 Mich App 189, 191; 624 NW2d 469 (2000).

The United States Constitution and the Michigan Constitution guarantee the right of persons to be secure against unreasonable seizures. US Const, Am IV; Const 1963, art 1, §11; *People v Jenkins*, 472 Mich 26, 31; 691 NW2d 759 (2005). "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." *Jenkins*, 472 Mich at 32, citing *Terry v Ohio*, 392 US 1, 22; 88 S Ct 1868; 20 L Ed 2d 889 (1968). Such a detention does not violate the Fourth Amendment if the officer has "a reasonably articulable suspicion that criminal activity is afoot." *Jenkins*, 472 Mich at 32; See also *Terry*, 392 US at 21; *People v Nelson*, 443 Mich 626, 631-632; 505 NW2d 266 (1993). Whether an officer has a "reasonable suspicion" is determined on a case-by-case basis by evaluating the totality of the facts and circumstances. *Jenkins*, 472 Mich at 32. In making this determination, "[c]ommon sense and everyday life experiences predominate over uncompromising standards" or bright line rules. *Nelson*, 443 Mich at 635-636.

Fourth Amendment considerations are not implicated until a person is "seized." *Jenkins*, 472 Mich at 32. In this case, both parties agree that defendant was seized within the meaning of the Fourth Amendment when Reckling applied physical force to the back of defendant's person by grabbing his shirt collar. Thus, the only question before this Court is whether Reckling had reasonable suspicion to believe that a crime was afoot when he seized defendant.

Plaintiff argues that Reckling had a reasonable suspicion that defendant was about to, or had, placed graffiti on a dumpster in the vacant lot, a violation of city ordinance. Reckling's suspicion was apparently based on defendant's presence in an area where graffiti had previously been applied. However, Reckling testified that in his six-year career as a law enforcement officer, he had never arrested anyone for defacing any location with graffiti. Under these circumstances, the area could not be characterized as a high crime area.[2] Further, Reckling did not testify to seeing any new graffiti at the location the evening of October 11, 2011, nor did he state that he saw defendant engaged in any movements from which it could be inferred defendant

[1] The court reasoned as follows: "So the Court is going to grant the motion. I think it would probably be more appropriately to grant a motion to quash because I'm not suppressing any evidence."

[2] Reckling explained that it is "common that in an area in which a crime is occurring, such as graffiti or larcenies, people that are out and about, we like to identify them if possible so that later on the next shift or two if we have a crime such as larceny or graffiti, we know who was in that area." As noted above, there was no evidence that defendant was defacing property at the time. Further, there was no testimony about larcenies in the area, past or present.

had applied or was going to be applying graffiti. Even if Reckling initially had such a suspicion, that suspicion would have dissipated when he saw that defendant had no paint on his hands or clothing. In sum, being in a location at 10:24 p.m. where old graffiti was present does not create a particularized suspicion that someone was engaged in defacing property.

Plaintiff next argues that defendant's running and hiding behind the pickup truck was sufficient to arouse reasonable suspicion. "While flight at the approach of the police, by itself, does not support a reasonable suspicion to support an investigative stop, it is a factor to be weighed in the consideration of the totality of the circumstances." *People v Shields*, 200 Mich App 554, 558; 504 NW2d 711 (1993). Under the circumstances, it unclear that defendant even knew that Reckling was a police officer when he ran behind the pickup truck. According to Reckling's own testimony, the night was very dark, the area was poorly lit, and Reckling himself could not see defendant's face looking toward him, despite the benefit of headlights. Further, Reckling had done nothing to identify himself, and his vehicle did not have police lights on its roof. Reckling testified that both sides of the vehicle have "red and blue stickers that indicate it is a police vehicle," but he also admitted that in similar circumstances, he could not always see what was on the side of a vehicle approaching him. In fact, Reckling testified that defendant explained he thought Reckling was a "friend of his." Contrary to plaintiff's assertion, the fact that defendant thought he knew the person in the vehicle is not inconsistent with his having hid from that person. Given that Reckling's testimony does not establish a particularized suspicion that defendant was engaged in defacing property, the fact that defendant ran and hid behind the pickup truck was alone insufficient to support reasonable suspicion.

Plaintiff also argues that Reckling had reasonable suspicion that defendant was about to illegally trespass on private property. Reckling testified that he grabbed defendant's shirt because he thought that defendant was about to go through a storage room door at Hebb's Inn, an action that would constitute an illegal trespass. However, the only indication the officer had that defendant was trying to enter the storage room, right in front of the officer, was that defendant was moving in the direction of a door to the storage room. Moreover, Reckling admitted that he never asked defendant whether he was staying at Hebb's Inn, or whether defendant had a reason to be in the parking lot. Reckling's assumption that defendant was about to commit an illegal trespass was an "inchoate and unparticularized suspicion or hunch," an insufficient basis to justify the seizure of a person. *Terry*, 392 US at 27.

Lastly, plaintiff posits that Reckling had reasonable suspicion that defendant was committing the crime of public intoxication, a civil violation in Mason. The applicable ordinance provides that "[n]o person shall be intoxicated in a public place *and* either endanger directly the safety or another person or of property." Mason Ordinance, §42-79 (emphasis added). There is minimal evidence in the record that defendant was intoxicated (alleged slurred speech). But there are no facts in the record to support an assertion that defendant was directly endangering the safety of another person or property.

Given the existing record, the trial court did not abuse its discretion by dismissing the resisting and obstructing charge.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Joel P. Hoekstra
/s/ Douglas B. Shapiro