

Order

Michigan Supreme Court
Lansing, Michigan

April 22, 2022

Bridget M. McCormack,
Chief Justice

163710

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 163710
COA: 354414
Oakland CC: 2018-269141-FH

JAY DAVID SOULLIERE,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the July 29, 2021 judgment of the Court of Appeals is considered. Pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REVERSE the Court of Appeals and REINSTATE the Oakland Circuit Court's order granting defendant's motion to suppress and dismissing the charges. As noted by dissenting Judge SHAPIRO, the record does not support the conclusion that the officers knew that defendant was the driver of the car at the time of the traffic stop. Thus, Detective Bishop's prior knowledge of defendant has no bearing on whether the officers had a reasonable suspicion of criminal activity at the time the stop was made. The majority therefore clearly erred by considering that knowledge in concluding that reasonable suspicion existed. See *People v Champion*, 452 Mich 92, 98 (1996) ("A valid investigatory stop must be justified at its inception . . ."). Similarly, the majority erred by relying on Deputy Panin's training and experience that hand-to-hand drug transactions were likely transpiring when the owner of the house was present because Panin did not discover that the owner was present at the time of the alleged drug transaction until *after* the traffic stop.

Further, the majority's reliance on the exchange of money in the driveway of a house known as a place where people sold drugs was flawed. As noted by Judge SHAPIRO, Deputy Panin conceded that he did not observe any other activity on that day indicative of drug activity. And despite the claim that it was known as a drug house, probable cause had never been established to search the home.

That leaves Deputy Panin's observation of the passenger in the car giving money to the driver of the car and the driver counting it. Without more, Panin's observation does not support a finding of reasonable suspicion of criminal activity. Deputy Panin did not observe the passenger take anything from the driver in return for the money. His observation therefore amounts to nothing "more than an inchoate or unparticularized suspicion or 'hunch,'" *Champion*, 452 Mich at 98, and the trial court did not err by granting defendant's motion to suppress and dismissing the charges.

ZAHRA, J., would grant leave to appeal.

VIVIANO, J. (*dissenting*).

The majority here holds that where an experienced police officer sees what he believes to be a hand-to-hand transaction of methamphetamine at an address known to be used for illicit drug activity, there is no reasonable suspicion to conduct a brief investigatory stop of the vehicle in which the transaction occurred. Because I believe the majority misapplies the standard governing such a stop and misconstrues the factors supporting the police officers' reasonable suspicion at the time of the stop, I dissent.

Police officers may conduct an investigatory stop of a vehicle if the totality of the circumstances “yield[s] a particular suspicion that the individual being investigated has been, is, or is about to be engaged in criminal activity. . . . That suspicion must be reasonable and articulable . . .” *People v Nelson*, 443 Mich 626, 632 (1993). Moreover, “[a] stop of a motor vehicle for investigatory purposes may be based upon fewer facts than those necessary to support a finding of reasonableness where both a stop and a search [are] conducted by the police.” *People v Whalen*, 390 Mich 672, 682 (1973).¹

The initial problem with the majority's approach is that it examines the evidence seriatim rather than as a whole. “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.” *People v Jenkins*, 472 Mich 26, 32 (2005). It is the “totality of the circumstances as understood and interpreted by law enforcement officers, not legal scholars, [which] must yield a particular suspicion that the individual being investigated has been, is, or is about to be engaged in criminal activity.” *Nelson*, 442 Mich at 632. “[F]actors that in isolation appear innocent may, in combination, provide a police officer with reasonable suspicion to justify an investigative stop.” *People v Oliver*, 464 Mich 184, 193 (2001). Thus, it is not enough to analyze each piece of evidence in isolation as the majority does here.

Moreover, the majority's separate analyses of the evidence are flawed. First, the majority says that Deputy Bishop's prior knowledge concerning defendant was irrelevant because the officer did not know that it was defendant they were stopping. That makes sense, but this observation was not critical to the Court of Appeals' analysis and it is not determinative here in light of the other evidence discussed below. The majority's second argument is that Deputy Panin's experience was irrelevant because it was based, in part,

¹ In this case, the issue is only whether the stop was justified; everything that occurred after the stop is justified as a search incident to arrest because defendant did not have a driver's license. MCL 257.311; MCL 257.901; *People v Chapman*, 425 Mich 245, 250-251 (1986); *United States v Robinson*, 414 US 218, 235 (1973).

on knowing that drug deals were likely occurring when the owner of the home was present.² It was error to rely on this, the majority contends, because Panin did not know the owner was part of the transaction until after the stop. That is true, as far as it goes, but it does not go very far here. Deputy Panin's testimony was not simply premised on the owner being present. He testified that he observed "some kind of transaction between the driver and the passenger," followed by the driver's counting money. Based on his training and experience, Deputy Panin believed that he witnessed a hand-to-hand drug transaction. This testimony was independent of whether the owner of the house had been involved in the transaction.

The majority's next argument is that knowledge of the house's use for drug sales was "flawed" because no drug sales were observed that day. But there is no support for the majority's apparent belief that the police must witness the crimes being committed in order to have reasonable suspicion:

"The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. . . . A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time." [*Nelson*, 443 Mich at 638, quoting *Adams v Williams*, 407 US 143, 145-146 (1972).]

The question in this case is whether there was reasonable suspicion, not even for a search but merely for an investigatory stop. To the extent the majority holds that the officer must witness an actual crime, the majority has eliminated the concept of reasonable suspicion.³ Contrary to the majority's unfounded assertion, courts routinely rely on the

² Deputy Panin was trained in narcotics and surveillance and, at the time of the stop, had spent 15 years in the Oakland County Sheriff's Department and 4 years on the Oakland County Narcotics Enforcement Team. During his career, he investigated 500 drug cases and was the officer in charge in half of those cases. At both the preliminary examination and the evidentiary hearing, he was qualified as an expert in street-level drug dealing.

³ In these circumstances, such a rule is tantamount to requiring there to be probable cause for an arrest. If the much higher standard of probable cause was met, there would be no need for reasonable suspicion allowing a mere investigatory stop. For the same reasons, the majority's gratuitous observation that "probable cause had never been established to search the home" is utterly irrelevant.

fact the location is a known crime area when determining whether there is reasonable suspicion to justify a stop. See, e.g., *People v Champion*, 452 Mich 92, 99 (1996) (finding reasonable suspicion and citing among other factors that “the area was a known drug crime area”) (quotation marks and citation omitted).

At this point in the analysis, the majority has eliminated almost all the evidence; the only piece left is Deputy Panin’s observation of the money exchange. The majority’s final argument is that this evidence alone is insufficient to support reasonable suspicion. But this is not the only evidence supporting reasonable suspicion. As noted, Deputy Panin’s testimony that the exchange of money was indicative of a drug transaction was based on his lengthy experience. Cf. *Nelson*, 443 Mich at 636 (“[D]eference should be given to a law enforcement officer of twenty-three years who states that certain behavior by particular individuals exhibits a ‘carbon copy’ of what the officer would otherwise believe to be a drug purchase.”). Moreover, he and Deputy Bishop had received information from various sources that the house in question was being used for drug sales.

This evidence, considered as a whole, gives rise to a reasonable suspicion sufficient to justify a stop. While it is certainly true that the exchange of money outside a house might not otherwise be suspicious to a lawyer or judge, Deputy Panin’s testimony indicates that the manner of the exchange here would reasonably raise the suspicions of an experienced police officer. In light of the information the officers received that the house was being used for drug sales, the decision to stop defendant reflects “commonsense judgments and inferences about human behavior.” *Jenkins*, 472 Mich at 32 (quotation marks and citations omitted); cf. *Nelson*, 443 Mich at 636-637 (agreeing with a decision holding that a defendant’s presence in a high-crime area together with his evasive behavior was sufficient to justify reasonable suspicion supporting a stop).

By examining the evidence piece by piece, the majority loads the dice for its conclusion that no piece of evidence alone justified the stop. And in doing so, the majority appears to suggest that to have reasonable suspicion, the officers needed to actually observe the illicit drugs as they were being exchanged. Such a holding would do away with the concept of reasonable suspicion. The Court of Appeals appropriately determined that reasonable suspicion existed in this case. I therefore respectfully dissent and would deny leave.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 22, 2022

Handwritten signature of Larry S. Royster in black ink.

Clerk