

Order

Michigan Supreme Court
Lansing, Michigan

June 21, 2023

Elizabeth T. Clement,
Chief Justice

164859

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

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

v

SC: 164859
COA: 357699
Oakland CC: 2021-276333-FH

CLAUDELL TURNER,
Defendant-Appellee.

On order of the Court, the application for leave to appeal the August 18, 2022 judgment of the Court of Appeals is considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we VACATE the judgment of the Court of Appeals and REMAND this case to that court for further proceedings not inconsistent with this order. The Court of Appeals held that the search of the defendant's person revealing drugs and a digital scale was unconstitutional under the Fourth Amendment. In reaching this conclusion, the Court of Appeals held that the search was not justified under the "plain feel" exception to the warrant requirement. Generally, under the United States Supreme Court's decision in *Terry v Ohio*, 392 US 1 (1968), police officers may conduct an investigatory stop if they have "reasonable suspicion that crime is afoot." *People v Champion*, 452 Mich 92, 98 (1996) (quotation marks and citation omitted). When conducting such a stop, an officer who has reasonable suspicion that a person is armed and dangerous may perform a limited protective search without a warrant. *Terry*, 392 US at 26; see also *Champion*, 452 Mich at 99. "The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." *Terry*, 392 US at 27; see also *People v Custer*, 465 Mich 319, 328 (2001).

A separate but related exception to the warrant requirement is the "plain feel" exception, which allows officers to search the interior of clothing when an object's "incriminating character is immediately apparent" (i.e., provides probable cause to believe the object is "nonthreatening contraband") during a limited protective search. *Minnesota v Dickerson*, 508 US 366, 373, 375-376 (1993); see also *Champion*, 452 Mich at 100-101 (adopting *Dickerson*). That exception "does not apply until the officer concludes that the

object at issue is not a weapon.” *United States v Richardson*, 657 F3d 521, 524 (CA 7, 2011), citing *Dickerson*, 508 US at 378; *United States v Muhammad*, 604 F3d 1022, 1026-1027 (CA 8, 2010).

In the present case, the prosecution argues that *Terry* justified searching the interior of the defendant’s clothing without reference to the “plain feel” exception. A *Terry* search requires only reasonable suspicion and is lawful if the search is “necessary for the discovery of weapons which might be used to harm the officer or others nearby” and is “reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer.” *Terry*, 392 US at 26, 29; *Champion*, 452 Mich at 99. The Court of Appeals majority mentioned this standard but never applied it and ultimately analyzed the issue only under the “plain feel” exception. Accordingly, we vacate the Court of Appeals’ judgment and remand this case to the Court of Appeals to address this issue.

We do not retain jurisdiction.



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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.

June 21, 2023

Clerk