

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

GILBERT ANDREW CALHOUN,

Defendant-Appellee.

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UNPUBLISHED

May 7, 1996

No. 162592

LC No. 91-055171

Before: Jansen, P.J., and McDonald and D. C. Kolenda,\* JJ.

MEMORANDUM..

The People appeal by leave granted from an October 23, 1992, order affirming the district court's dismissal, following a preliminary examination, of the information against defendant charging possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)iv) and possession of marijuana, MCL 333.7403(2)(d); MSA 14.15(7403)(2)(d). The district court judge found the evidence presented against defendant was the product of an illegal search and seizure . We agree and affirm.

A trial court's ruling on a motion to suppress ordinarily will not be reversed unless clearly erroneous. *People v Bordeau*, 206 Mich App 89; 520 NW2d 374 (1994). However, application of constitutional standards by a trial court is not entitled to the same deference. *Id.* Application of constitutional standards presents issues of law, which are reviewed for clear error on appeal. *People v Thomas*, 438 Mich 448; 475 NW2d 288 (1991). We find no clear error in this matter. Although the detectives' original questioning of defendant may not have risen to the level of a *Terry* stop,<sup>1</sup> their subsequent search of defendant required either probable cause or a reasonable and articulable suspicion that defendant had committed, or was about to commit, a crime. The search of defendant was illegal because the detectives did not have either probable cause nor a reasonable and articulable suspicion as required for a *Terry* stop and frisk.<sup>2</sup> The encounter may not be considered voluntary merely because one of the officer's stated defendant was free to leave when the other officer remained in possession of defendant's identification.

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\* Circuit judge, sitting on the Court of Appeals by assignment.

Affirmed.

/s/ Kathleen Jansen  
/s/ Gary R. McDonald  
/s/ Dennis C. Kolenda

<sup>1</sup> *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968)

<sup>2</sup> The prosecutor failed to preserve the issue whether the district court erred by finding defendant had not given consent to be searched. The prosecutor did not raise the issue in his appeal of right before the Recorder's Court nor was the issue argued in his brief on appeal to this court. The issue is considered abandoned. *Severn v Sperry Corp*, 212 Mich App 406; 538 NW2d 50 (1995).