STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER ARNOLD ARSENAULT,

Defendant-Appellant.

UNPUBLISHED
July 1, 1997

No. 195876
Recorder's Court
LC No. 95-010921

Before: Taylor, P.J., and Griffin and Saad, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of arson of a dwelling house, MCL 750.72; MSA 28.267. Defendant appeals as of right, and we affirm.

Defendant first argues that the evidence was not sufficient to support his conviction because the structure that was burned was not a dwelling house. We disagree. When reviewing a sufficiency of the evidence argument, this Court must consider whether the evidence, when viewed in the light most favorable to the prosecution, was sufficient for a rational trier of fact to find that the elements of the offense were proven beyond a reasonable doubt. *People v Vaughn*, 200 Mich App 32, 35; 504 NW2d 2 (1993).

Pursuant to MCL 750.72; MSA 28.267:

> [a]ny person who wilfully or maliciously burns any dwelling house, either occupied or unoccupied, or the contents thereof, whether owned by himself or another, or any building within the curtilage of such dwelling house, or the contents thereof, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 20 years.

The question of what constitutes a dwelling house for purposes of arson was considered by the Supreme Court in *People v Reeves*, 448 Mich 1, 19; 528 NW2d 160 (1995). The Court indicated that a structure is a dwelling house if it is intended to be occupied as a residence. *Id*. at 17. The Court in *Reeves* noted the extreme state of disrepair of the house in question and held that "[i]f a dwelling

house is unoccupied and dilapidated to the extent that it is deemed abandoned, then the structure is no longer considered a dwelling house and common-law arson has not been perpetrated." *Id.* at 19.

In the case at bar, the evidence established that the house that was burned was in an extreme state of disrepair: it was boarded up; there were no normal furnishings inside; and the gas meter was turned off. However, the evidence also established that there were persons living in the house as of the date of the fire. Because the holding of *Reeves, supra,* is that a structure is not a dwelling house if it is unoccupied and dilapidated, the facts in the case at bar fall outside *Reeves*. Although the house in the case at bar was dilapidated, it was also occupied. The definition of a dwelling house contained in *Reeves* states that a house is a dwelling house if it is intended to be occupied as a residence. *Id.* at 17. Because people were living in the house as of the date of the fire, the structure was a dwelling house. Viewing the evidence in the light most favorable to the prosecutor, a rational trier of fact could have found that the prosecution had proven the elements of the offense beyond a reasonable doubt.

Defendant further argues that the initial stop of him by the police violated his constitutional right to be free from unreasonable searches and seizures, and that the evidence subsequently obtained from his person and his duffel bag was therefore inadmissible as fruit of the poisonous tree. We disagree. We review for clear error the trial court's findings of historical fact made in deciding a motion to suppress but review the ultimate ruling de novo. *People v Goforth*, 222 Mich App 306, 310, n 4; __ NW2d __ (1997). A decision is clearly erroneous where the reviewing court is left with a definite and firm conviction that a mistake has been made. *People v Yeoman*, 218 Mich App 406, 410; 554 NW2d 577 (1996). The Fourth Amendment of the United States Constitution, and art 1, § 11, of Michigan's Constitution, guarantee the right to be free from unreasonable searches and seizures. *People v Champion*, 452 Mich 92, 97; 549 NW2d 849 (1996). As recognized by the United States Supreme Court in *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968), police officers may make an investigatory stop based on reasonable suspicion. *Champion*, *supra* at 97; *Yeoman*, *supra* at 410. "The police officer must have had a particularized and objective basis for the suspicion of criminal activity" in order to make an investigatory stop. *Champion*, *supra* at 98-99.

Here, there was an objective basis for particularized suspicion of defendant when he was stopped by the police. The police officer who stopped defendant had received information via his radio that a person wearing a green army jacket and carrying an olive green duffel bag was possibly involved in a fire and possible arson on Wick Street in Taylor. Defendant's jacket and duffel bag matched a witness' description of a person who was seen leaving the house on Wick Street as it was billowing with smoke. The same witness had seen defendant approaching the house approximately five minutes earlier. Defendant contends that this information does not constitute reasonable suspicion because the fire had not been declared an arson at the point in time that he was stopped. However, reasonable suspicion does not entail absolute certainty that a crime has occurred. See *People v Peebles*, 216 Mich App 661, 665-667; 550 NW2d 589 (1996) (totality of the circumstances supported a finding of reasonable suspicion where a police officer saw a vehicle traveling without its headlights on in the darkened parking lot of a mall at 3:30 a.m.; this Court inferred that the officer suspected theft or careless driving in those circumstances), and *People v Hutton*, 50 Mich App 351, 361; 213 NW2d 320 (1973) (police officers were aware of sufficient specific and articulable facts to justify an

investigatory stop when they spotted a car with a TV protruding from its trunk at 4:55 a.m.). Here, although the fire had not yet been officially declared an arson, a person matching defendant's description had been seen walking away from a house that was on fire. This information connected defendant to the scene of a fire and possible arson. We hold that in these circumstances, there existed reasonable suspicion supported by specific and articulable facts to justify an investigatory stop of defendant.

Defendant next argues that statements taken from him at the scene and at the police station violated his Fifth Amendment rights against self-incrimination. We disagree. Defendant first contends that he was questioned on the scene without being advised of his *Miranda*[1] rights. *Miranda* warnings must be given when a person is subjected to custodial interrogation. *United States v Lushuk*, 65 F 3d 1105, 1108 (CA 4, 1995). Miranda warnings are generally not required during a routine traffic stop or a stop pursuant to *Terry, supra*. *Berkemer v McCarty*, 468 US 420, 437-442, 82 LEd 2d 317, 104 S Ct 3138 (1984). In the case at bar, the police lawfully stopped and questioned defendant, but did not arrest him until the witness arrived and identified him. The police officer conducting the questioning testified that defendant was free to leave during the questioning. There is no evidence that the police were coercive or intimidating so as to elevate the lawful *Terry* stop into a custodial interrogation for *Miranda* purposes. *Lushuk*, *supra* at 1109. We hold that defendant's Fifth Amendment rights against self-incrimination were not violated when he was questioned during the *Terry* stop.

Defendant's final argument is that his Fifth Amendment rights were violated when he was questioned at the police station because, although he had been advised of his *Miranda* rights before giving a statement, a notation on a document certifying that he was notified of his rights indicates that defendant did not wish to make a statement. However, the officer conducting the questioning of defendant testified that the notation refers to defendant's unwillingness to make a written statement. The officer testified that after defendant was advised of his rights and indicated that he understood those rights, defendant gave an oral statement, but then indicated that he did not wish to write down what he said. The officer then wrote in the portion of the document in which defendant could have written his statement that defendant did not wish to make a statement. Defendant has presented no evidence to contradict the officer's testimony. Therefore, the evidence makes clear that the notation about defendant not wishing to make a statement refers to a written statement and in no way affects the admissibility of defendant's oral statement that was made after he was advised of his rights and indicated that he understood those rights. We therefore hold that the statement made at the police station was admissible.

Affirmed.

/s/ Clifford W. Taylor
/s/ Richard Allen Griffin
/s/ Henry William Saad

[1] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).