

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ROBERT MCGHEE,

Defendant-Appellee.

UNPUBLISHED

February 5, 2004

No. 243383

Wayne Circuit Court

LC No. 02-004388

Before: Cooper, P.J., and O’Connell and Fort Hood, JJ.

MEMORANDUM.

Plaintiff appeals as of right the trial court’s decision granting defendant’s motion to suppress and dismissing criminal charges. We reverse. This case is being decided without oral argument pursuant to MCR 7.214(E).

Police officers investigating a complaint approached a car in which defendant was a passenger. Defendant fled before the officers came in contact with him. During the chase, defendant tossed away an object, later identified as a firearm. Defendant moved to suppress the evidence, asserting that the seizure was improper. The trial court granted the motion, relying on *People v Shabaz*, 424 Mich 42; 378 NW2d 451 (1985).

“Factual findings made in conjunction with a motion to suppress are reviewed for clear error.” *People v Kaslowski*, 239 Mich App 320, 323; 608 NW2d 539 (2000). “To the extent that a trial court’s decision is based on an interpretation of the law, appellate review is de novo.” *People v Zahn*, 234 Mich App 438, 445; 594 NW2d 120 (1999).

The trial court erred in relying on *Shabaz*, *supra*. In *People v Mamon*, 435 Mich 1, 4, n 2; 457 NW2d 623 (1990), the Court noted that the *Shabaz* Court assumed that the police chase constituted a seizure. However, a seizure does not take place until an officer has actually gained control of a person. *People v Lewis*, 199 Mich App 556, 559-560; 502 NW2d 363 (1993). Where a defendant flees after observing police officers and discards contraband during the chase, the contraband cannot be suppressed as the fruit of an illegal detention. *Id.*

Here, the uncontested facts show that defendant fled prior to coming into physical contact with the officers, so he was not seized before he discarded the weapon. Moreover, the evidence indicated that defendant intended to abandon the weapon, and once defendant relinquished the

weapon he lost standing to challenge its admissibility. *Mamon, supra*, at 7. Therefore, the trial court erroneously suppressed the evidence and dismissed the charges.

Reversed.

/s/ Jessica R. Cooper
/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood