

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

SIDNEY PAUL BOWERS,

Defendant-Appellee.

UNPUBLISHED

February 1, 2005

No. 251193

Wayne Circuit Court

LC No. 03-008764

Before: Zahra, P.J., and Neff and Cooper, JJ.

MEMORANDUM.

The prosecution appeals as of right the circuit court order granting defendant Sidney Paul Bowers' motion to quash and dismissing a charge of carrying a concealed weapon, MCL 750.227. We reverse.

Defendant was bound over on one count of carrying a concealed weapon after officers testified that they observed a handgun in plain view on the floorboard of his car when they approached a group of men gathered at a gas station. The circuit court granted defendant's motion to quash, finding that the officers lacked just cause to investigate the activities of the men.

In reviewing a district court's decision whether to bind over a defendant for trial, the circuit court may not substitute its judgment for that of the district court, and may reverse only when it appears on the record that the district court has abused its discretion. *People v Abraham*, 234 Mich App 640, 656; 599 NW2d 640 (1999). This Court reviews the circuit court's decision de novo to determine whether the district court abused its discretion. *Id.*

When a defendant moves to suppress evidence as illegally obtained, "[i]t is the prosecutor's burden to show that a search and seizure . . . were justified by a recognized exception to the warrant requirement." *People v Galloway*, 259 Mich App 634, 638; 675 NW2d 883 (2003). The plain view exception to the warrant requirement allows for the seizure of objects within the plain view of a lawfully situated officer. *People v Champion*, 452 Mich 92, 102-103; 549 NW2d 849 (1996). The plain view doctrine allows only for seizure and creates no right to conduct a search. *Id.* To seize the evidence, there must be probable cause to believe it to be incriminating or contraband. See generally *Arizona v Hicks*, 480 US 321; 107 S Ct 1149; 94 L Ed 2d 347 (1987); see also *Texas v Brown*, 460 US 730, 741-742; 103 S Ct 1535; 75 L Ed 2d 502 (1983). No exigent circumstances are required for seizure. *Champion, supra* at 101.

Here, defendant argued that the officer engaged in a search and, therefore, his actions did not fall under the plain view exception. However, there was no evidence that a search was performed. The officer testified that he approached the group of men for loitering. He asked who owned the car that was stopped between the gas pumps. There is no evidence that he detained defendant or conducted a stop. The only evidence was that the officer approached the car and saw a handgun in plain view on the floorboard. In granting defendant's motion to quash, the circuit court improperly reconsidered the credibility of the officer, and failed to review the district court decision for abuse of discretion. Accordingly, the circuit court improperly reversed the district court's decision to bind defendant over for trial.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Brian K. Zahra

/s/ Janet T. Neff

/s/ Jessica R. Cooper