

# Court of Appeals, State of Michigan

## ORDER

People of MI v Clinton Ankton

Docket No. 310194

LC No. 12-000023-AR

Kurtis T. Wilder  
Presiding Judge

Cynthia Diane Stephens

Michael J. Riordan  
Judges

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In lieu of granting the application, the Court orders, pursuant to MCR 7.205(D)(2), that the April 30, 2012, order of the Wayne Circuit Court affirming the district court's order of dismissal hereby is REVERSED.

A police officer saw defendant walking with a man who apparently was carrying a weapon; defendant then went to sit in a restaurant. The police officer then followed the defendant into the restaurant and planned to talk to him.

A police officer does not commit a seizure by approaching an individual and seeking voluntary cooperation through non-coercive conduct. *People v Jenkins*, 472 Mich 26, 33; 691 NW2d 759 (2005). A seizure for the purposes of the Fourth Amendment does not occur without physical force to restrain movement or where the defendant submits to an officer's displayed authority. *People v Lewis*, 199 Mich App 556, 559; 502 NW2d 363 (1993). Here, the fact that defendant went into the restaurant demonstrates that the police did not physically restrain his movement. Because a seizure does not take place until an officer has actually gained control of a person, contraband cannot be suppressed as the fruit of an illegal detention absent an actual detention. Once the officer approached defendant, there was a strong odor of marijuana. The police officer's recognition of the odor of marijuana from defendant would lead a reasonably prudent person to believe that evidence of marijuana possession would be found. See generally *People v Kazmierczak*, 461 Mich 411, 420-421; 605 NW2d 667 (2000); *People v Ridgeway*, 74 Mich App 306, 313-314; 253 NW2d 743 (1977). Based on the circumstances, the officer was entitled to draw specific reasonable inferences regarding criminal activity. *Terry v Ohio*, 392 US 1, 27; 88 S Ct 1868; 20 L Ed 2d 889 (1968).

The officer therefore had a reasonable basis to ask defendant about marijuana. Further, even if the officer's question regarding marijuana rose to the level of an interrogation, i.e., that it was reasonably likely to elicit an incriminating response, *People v Anderson*, 209 Mich App 527, 532-533; 531 NW2d 780 (1995), the record reflects that defendant was not in custody because he was not subjected to a restraint on his freedom of movement to the degree associated with a formal arrest, *People v Peerenboom*, 224 Mich App 195, 197; 568 NW2d 153 (1997). Therefore, the 98 bags of marijuana discovered by the officer should not have been suppressed. The case is REMANDED for further proceedings consistent with this order.

This order is to have immediate effect, MCR 7.215(F)(2). The Court retains no further jurisdiction.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

MAR 07 2013

Date

  
Chief Clerk