

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JOHN VICTOR ROUSELL,

Defendant-Appellee.

UNPUBLISHED

April 1, 2008

No. 276582

Wayne Circuit Court

LC No. 06-010950-01

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

CHRIS JONES,

Defendant-Appellee.

No. 276636

Wayne Circuit Court

LC No. 06-010950-02

Before: Servitto, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Defendant John Rousell was charged with two counts of armed robbery, MCL 750.529, first-degree home invasion, MCL 750.110a, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant Chris Jones was similarly charged with two counts of armed robbery and first-degree home invasion, as well as a single count of receiving or concealing stolen property valued at \$1,000 or more but less than \$20,000, MCL 750.535(3)(a). Following an evidentiary hearing, the trial court concluded that defendants were arrested without probable cause and granted their motions to suppress evidence obtained during investigation of the home invasion and robberies with which defendants had been charged. The prosecution subsequently indicated that it was unable to proceed without the suppressed evidence and the court dismissed the cases without prejudice. The prosecution appeals from the dismissals as of right. Because we conclude that the prosecution met its burden of establishing probable cause to arrest defendants, but that the trial court failed to consider whether the totality of the circumstances provided the police with a reasonable and articulable suspicion for conducting an investigatory stop of defendants in the first instance, we reverse and remand.

The charges against defendants arise from an incident in which three men broke into a Detroit home and robbed two of its occupants. At the hearing on defendants' motions to suppress, Officer Lisa Alexander testified that she responded to the scene on Belvidere Street and obtained a description of the perpetrators. She also discovered a trail of jewelry leading across Belvidere Street. As the police continued to investigate the scene, a bicyclist approached and a neighbor yelled that the bicyclist may have been involved in the crimes. According to Officer Alexander, the bicyclist acknowledged that he was a stranger to that neighborhood and mentioned that he lived at "Crane and Moffat," which was two to three blocks from the crime scene. A backup police unit went to the area of Crane and Moffat streets, where Officer Aretha Inman testified she saw the bicyclist and defendants Rousell and Jones on a porch. According to Officer Inman, the men on the porch matched the descriptions of the suspects earlier broadcast by Officer Alexander. As Officer Inman and her partner approached the men, defendant Jones ran inside the house. With their guns drawn, the officers ordered the men who remained on the porch (defendant Rousell and the bicyclist) to approach them at the gate in front of the property. Officer Inman also noticed what appeared to be credit cards lying face down between the fence and the sidewalk. During a subsequent patdown search of Rousell, the police discovered a gun and he was then arrested. Officer Inman then turned over one of the credit cards on the ground and observed that it bore the name of one of the robbery victims. Both Officer Alexander and Officer Inman also heard defendant Jones' father, Shulie Jones, yell, "Get out of here" or "Get this shit out of here," and then saw Shulie push defendant Jones from the home. During a subsequent patdown search of defendant Jones, Officer Inman felt something hard in his pocket, which she testified she could not eliminate as a weapon. She searched the pocket and discovered a porcelain dog and other items of jewelry that were taken during the robbery. Shulie Jones then consented to a search of the basement of his house, where defendant Jones reportedly lived. Several items from the robbery were discovered there during the search.

Defendants moved to suppress the evidence. At the conclusion of the evidentiary hearing on defendants' motions, the trial court concluded that there was "no probable cause to make a warrantless arrest of these defendants and that the evidence must be suppressed based on the totality of the testimony and totality of the circumstances." The court subsequently commented on the police officers' testimony, stating that "their accounts conflicted somewhat as to what transpired" and "that the People did not meet their burden because of the conflicting testimony and the lack of evidence in some respects in terms of descriptions." The court then suppressed all of the evidence obtained as a result of the police officers' activities at Crane and Moffat streets, including a statement made by defendant Rousell during questioning after his arrest, as the "fruits of the poisonous tree."

On appeal, the prosecutor argues that the trial court erred in finding that there was no probable cause to arrest defendants without a warrant. "This Court reviews a trial court's factual findings in a suppression hearing for clear error. But the '[a]pplication of constitutional standards by the trial court is not entitled to the same deference as factual findings.'" *People v Jenkins*, 472 Mich 26, 31; 691 NW2d 759 (2005) (citations omitted). Rather, this Court reviews de novo the trial court's ultimate ruling on a motion to suppress. *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005). In reviewing a trial court's ruling on the question of probable cause, "an appellate court must determine whether the facts available to the arresting officer at the moment of arrest would justify a fair-minded person of average intelligence in believing that

the suspected individual had committed the felony.” *People v Kelly*, 231 Mich App 627, 631; 588 NW2d 480 (1998).

We agree with the prosecution that the trial court erred in determining that the police lacked probable cause to arrest defendants. Regardless of any links between defendant Rousell and the charged home invasion and robbery, the discovery of a concealed weapon on his person during a patdown search provided probable cause for his arrest. *Id.* Similarly, the discovery of items from the robbery in defendant Jones’ pocket during a patdown search provided probable cause for his arrest. Indeed, neither defendant seriously disputes this point.

Instead, the material question is whether the police had a reasonable and articulable suspicion to allow them to detain defendants in the first instance. Under certain circumstances, a police officer may approach and temporarily detain a person for the purpose of investigating possible criminal behavior even though there is no probable cause to support an arrest. See *Terry v Ohio*, 392 US 1, 22; 88 S Ct 1868; 20 L Ed 2d 889 (1968). A brief detention does not violate the Fourth Amendment if the officer has a reasonable and articulable suspicion that the person has committed or is about to commit a crime. *Jenkins, supra* at 32. During this type of investigatory stop, a police officer is entitled to conduct a limited search of the outer clothing of the person stopped to determine if the person has any weapons that might be used in an assault against the officer. *People v Shabaz*, 424 Mich 42, 54-55; 378 NW2d 451 (1985). Whether an officer has a reasonable suspicion to make an investigatory stop is determined case by case, on the basis of an analysis of the totality of the facts and circumstances. *Jenkins, supra*.

In this case, the trial court did not address the issue whether the totality of the circumstances provided the police with a reasonable and articulable suspicion for conducting an investigatory stop of defendants. Although the trial court summarized the testimony offered at the evidentiary hearing, there were conflicts in key aspects of the testimony and the trial court did not make any findings of fact resolving those conflicts. For instance, although Officer Inman testified that defendants matched the descriptions of the suspects, the record discloses that differing accounts of the suspects’ descriptions were given. In addition, Officer Inman testified that defendant Jones ran into the house as she approached the men on the porch, which is a factor that may aid in supporting the existence of a reasonable suspicion. See *People v Shields*, 200 Mich App 554, 558; 504 NW2d 711 (1993) (“[w]hile flight at the approach of the police, by itself, does not support a reasonable suspicion to support an investigative stop, it is a factor to be weighed in the consideration of the totality of the circumstances”). Conversely, Shulie Jones testified that defendant Jones was inside the house before the police arrived, having been there “practically all that day,” and he denied seeing anyone run into the house.

The prosecution also asserts that the police officers knew that the perpetrators had fled in the direction of Crane and Moffat streets. According to Officer Alexander, she was flagged down by several neighbors who were yelling and screaming, “they went that way.” Later, the officers began to canvass the area and found a trail of jewelry. According to Officer Alexander, the trail began “right in front of the yard leading across the street maybe twenty feet, if that.” But according to Officer Inman, the trail went west, leading behind the house across the street toward the backyard. Specifically, Officer Inman testified:

From Belvidere the jewelry was leading west, so when you get to the corner you make a left, that would be going west, the jewelry was leading behind the house

across the street toward the backyard, so we had to go that way to go around the corner to pick up the trail, but as we went that way as soon as we got to that corner you could see them sitting on the porch, which was on the right-hand side.

Additionally, although Officer Inman indicated that defendants could be seen after turning the corner, Officer Alexander testified that the house where they were located was two or three blocks from the crime scene. The trial court did not make any findings regarding the length of the jewelry trail, nor did it discuss Officer Alexander's reference to neighbors reporting that the perpetrators had fled in the direction of the jewelry trail and whether the trail was in the direction of Crane and Moffat streets.

Although this Court reviews de novo the trial court's ruling on a motion to suppress, the findings of fact that are the underpinnings of the court's ruling are reviewed for clear error. *Jenkins, supra* at 31. Because the trial court failed to consider whether the totality of the circumstances provided the police with a reasonable and articulable suspicion for conducting an investigatory stop of defendants, and because the court did not make the necessary factual findings to resolve the issue, we remand for consideration of this issue.

The prosecution additionally argues that even if the detentions and patdowns were not valid, the evidence discovered inside the yard and inside the house need not be suppressed because it inevitably would have been discovered. This issue is not preserved for our review because it was not raised before or decided by the trial court. *People v Metamora Water Service, Inc*, 276 Mich App 376, 382; 741 NW2d 61 (2007).

The exclusionary rule prohibits the introduction into evidence of material seized and observations made during an unlawful detention or search, as well as the products or indirect results of such activity. *People v Stevens (After Remand)*, 460 Mich 626, 634; 597 NW2d 53 (1999); see also *Mapp v Ohio*, 367 US 643; 81 S Ct 1684; 6 L Ed 2d 1081 (1961). Inevitable discovery, independent source, and attenuation are three exceptions to the exclusionary rule. *People v LoCicero*, 453 Mich 496, 508-509; 556 NW2d 498 (1996). Under these exceptions, if discovery of the evidence found in the yard and inside Shulie Jones' house following his consent to search was by other legal means inevitable, or was not so causally related to any illegality in the seizures of defendants Rousell and Jones as to prevent the dissipation of any taint, suppression of that evidence would not be required. See *id.* at 508-509 n 21-23. Moreover, even if defendant Rousell was illegally detained, the suppression of his statement during questioning after his arrest is not necessarily required. See *Kelly, supra* at 634 (noting that intervening circumstances can break the causal chain between an unlawful detention and subsequent inculpatory statements, "rendering the [statements] sufficiently an act of free will to purge the primary taint of the unlawful arrest") (citations and internal quotation marks omitted.) On remand, if the trial court determines that defendants were illegally seized, then it should also evaluate the applicability of the exceptions to the exclusionary rule to the other evidence in the case.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Deborah A. Servitto

/s/ Joel P. Hoekstra

/s/ Jane E. Markey