# STATE OF MICHIGAN

# COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES CHESTER BARNES,

Defendant-Appellant.

UNPUBLISHED
July 15, 2008

No. 282960
Oakland Circuit Court
LC No. 2007-008690-AR

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Before: Fitzgerald, P.J., and Talbot and Donofrio, JJ.

PER CURIAM.

At the conclusion of the preliminary examination, the sole charge against defendant, possession with intent to deliver less than 50 grams of heroin, MCL 333.7401(2)(a)(*iv*), was dismissed by the district court. The prosecution appealed as of right to the circuit court, which reversed the district court's ruling and remanded the case for bindover as charged. Defendant appeals by leave granted the circuit court's order reversing the district court's order of dismissal and remanding the case for bindover. We affirm.

Defendant initially argues that the circuit court erred in finding that the investigatory stop was lawful and that the subsequently recovered heroin was admissible as evidence. We disagree.

This Court reviews a district court's decision to bind over a defendant for an abuse of discretion. *People v Hudson*, 241 Mich App 268, 276; 615 NW2d 784 (2000). "This Court, in turn, reviews the circuit court's decision de novo to determine if the district court abused its discretion." *People v Green*, 260 Mich App 710, 713-714; 680 NW2d 477 (2004). "Rulings concerning the legality of a search/seizure or the application of the exclusionary rule present questions of law, which we review de novo." *People v Jenkins*, 472 Mich 26, 31; 691 NW2d 759 (2005).

The district court found that the officer lacked a reasonable suspicion to conduct an investigative stop. Consequently, the court ruled that the heroin should be suppressed. The prosecution contends that there is no legal basis to suppress the heroin because the investigative stop was lawful. In addition, the prosecution argues that defendant cannot challenge the introduction of the heroin because he abandoned it and has no expectation of privacy in it.

"The Fourth Amendment of the United States Constitution and the analogous provision in Michigan's Constitution guarantee the right of the people to be free from unreasonable searches

and seizures." *People v Champion*, 452 Mich 92, 97; 549 NW2d 849 (1996) (footnote omitted). "Searches and seizures conducted without a warrant are unreasonable per se, subject to several specifically established and well-delineated exceptions." *Id.* at 98. An exception exists when the police have a reasonable and articulable suspicion "that crime is afoot." *Id.*, citing *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968). Police officers may make a valid investigatory stop if they possess a reasonable suspicion that a person has engaged, or is about to engage, in criminal activity. *Id.*

> Reasonable suspicion entails something more than an inchoate or unparticularized suspicion or "hunch," but less than the level of suspicion required for probable cause. A valid investigatory stop must be justified at its inception and must be reasonably related in scope to the circumstances that justified interference by the police with a person's security. Justification must be based on an objective manifestation that the person stopped was, or was about to be, engaged in criminal activity as judged by those versed in the field of law enforcement when viewed under the totality of the circumstances. The detaining officer must have had a particularized and objective basis for the suspicion of criminal activity. An officer who makes a valid investigatory stop may perform a limited patdown search for weapons if the officer has reasonable suspicion that the individual stopped for questioning is armed and thus poses a danger to the officer. [*Champion, supra* at 98-99 (citations omitted).]

The evidence adduced at the preliminary examination established that Officer Dwight Green of the Pontiac Police Department observed defendant, in a high drug crime area, walking toward another man on the street. When the men appeared to notice Green's marked police car approaching, they abruptly turned away from each other. Green testified that, based on his 12 years of experience as an officer witnessing many drug deals, the men's suspicious behavior in abruptly turning away from one another upon seeing the police car, and the fact that the men were in an area known for drug activity, led Green to believe that the men were about to engage in a drug transaction. Green approached defendant on foot and asked him what was going on. Defendant nervously replied that he was not doing anything and did not have anything. Out of a concern for his safety, Green attempted to frisk defendant for weapons. Upon reaching out and touching defendant's shirt, defendant ran away. Green eventually caught up with defendant, pepper-sprayed him and pushed him to the ground. While Green struggled to get defendant into handcuffs, defendant reached into his front pants pocket, took out a bag of heroin, and threw it under a nearby truck.

Green possessed a reasonable suspicion to make the investigative stop based on the following factors: (1) defendant engaged in suspicious and evasive conduct by abruptly turning away from the man he was walking toward upon seeing the marked police car, (2) defendant was in a high drug crime area, and (3) Green believed, based on his 12 years of experience as an officer who witnessed many drug deals, that defendant was poised to engage in a drug deal. Under these circumstances, an investigatory stop was lawful. See *Champion*, *supra* at 99-100.

Because defendant cannot establish that any of the actions taken by police were unlawful, there exists no basis for suppression of the heroin. As argued by the prosecution, defendant is in no position to contest the introduction of the heroin evidence because he abandoned the heroin by throwing it under a truck. "If a person abandons an object, he has no justifiable expectation

of privacy in the object, and any police confiscation of the object is not a seizure in the constitutional sense." *People v Rice*, 192 Mich App 512, 516; 482 NW2d 192 (1992). Although "coercive police activity resulting in the abandonment serves to nullify any claim of abandonment," *id.*, defendant has failed to demonstrate that the police acted unlawfully. As a result, the circuit court correctly reversed the district court's ruling.

Finally, defendant argues that the circuit court erred in finding that there was probable cause to bind him over. We disagree. This Court reviews the circuit court's ruling regarding the bindover decision de novo. *Green*, *supra* at 713-714.

"For purposes of the preliminary examination, the proofs adduced must only establish probable cause to believe that a crime was committed and probable cause to believe that the defendant committed it." *People v Goecke*, 457 Mich 442, 469; 579 NW2d 868 (1998). "Probable cause requires a quantum of evidence 'sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief' of the accused's guilt." *People v Yost*, 468 Mich 122, 126; 659 NW2d 604 (2003). "Circumstantial evidence and reasonable inferences arising from the evidence are sufficient to support the bindover of the defendant if such evidence establishes probable cause." *People v Greene*, 255 Mich App 426, 444; 661 NW2d 616 (2003). "It is not, however, the function of the examining magistrate to discharge the accused when the evidence conflicts or raises a reasonable doubt of the defendant's guilt; that is the province of the jury." *Goecke*, *supra* at 469-470.

To prove that a defendant possessed with the intent to deliver less than 50 grams of heroin, a prosecutor must show that: (1) the substance is heroin, (2) the heroin weighs less than 50 grams, (3) the defendant was not authorized to possess the heroin, and (4) the defendant knowingly possessed the heroin with the intent to deliver. *People v Wolfe*, 440 Mich 508, 516-517; 489 NW2d 748 (1992), amended by 441 Mich 1201 (1992). Actual delivery of the controlled substance is not required to prove the intent to deliver. *Id.* at 524. Rather, intent to deliver can be established by circumstantial evidence and reasonable inferences from the evidence. *Id*. "Intent to deliver has been inferred from the quantity of narcotics in a defendant's possession, from the way in which the narcotics are packaged and from other circumstances surrounding the arrest." *Id.*

Here, evidence adduced at the preliminary examination showed that defendant, while struggling with Green, took an item from his pants pocket and threw it under a nearby truck. The object was later retrieved and found to be a plastic bag containing ten smaller individually wrapped, equally-sized plastic bags of heroin. Green testified that the manner in which the heroin was packaged, as well as the fact that defendant had $525 in cash on his person, supported the inference that defendant was selling drugs. Such an inference of intent to deliver was properly drawn in light of the circumstantial evidence. *Wolfe*, *supra* at 516-517. Further supporting that inference was the fact that defendant was found in a high drug crime area.

Consequently, there was probable cause to believe that defendant committed the charged offense. Therefore, the circuit court properly reversed the district court's ruling.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot
/s/ Pat M. Donofrio