

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

SHAWN LEON JENKINS,

Defendant-Appellee.

UNPUBLISHED

November 18, 2003

No. 240947

Washtenaw Circuit Court

LC No. 01-001356-FH

Before: Bandstra, P.J., and Hoekstra and Borrello, JJ.

HOEKSTRA, J., (*dissenting*).

I respectfully dissent.

I would find that the initial encounter between Officer Spickard and defendant, where Spickard engaged defendant in conversation and requested to see defendant's identification, did not constitute an investigatory stop. Further, I would conclude that the subsequent events that occurred while Spickard was awaiting the results of a LEIN check entitled Spickard to transform the event into an investigatory stop. Thus, I agree with plaintiff's argument that the trial court erred in granting defendant's motion to suppress evidence and dismiss the case. Consequently, I would reverse the trial court's order and remand this matter to the trial court for further proceedings.

The majority aptly sets forth law concerning investigatory stops. I further note that "[a] 'seizure' occurs within the meaning of the Fourth Amendment if, in view of all the circumstances surrounding an encounter with the police, a reasonable person would have believed that the person was not free to leave." *People v Shankle*, 227 Mich App 690, 693; 577 NW2d 471 (1998).

Here, Spickard approached defendant in a public place and initiated general conversation about the gathering. It was only after the woman opened the door and spoke to defendant that Spickard asked defendant if he lived in the complex and if he had identification. No evidence indicated that Spickard told defendant to remain where he was, told him that he was required to answer questions, or physically prevented him from moving off the steps. The trial court relied on the fact that in his own mind Spickard felt that defendant was not free to leave; however, an officer's subjective suspicions do not dictate whether an encounter was consensual. *United States v Waldon*, 206 F3d 597, 603 (CA 6, 2000). No evidence supported a conclusion that defendant was not free to end the encounter. *People v Frohriep*, 247 Mich App 692, 701; 637

NW2d 562 (2001) (encounter in which officers entered upon property and asked to look around to determine if controlled substances were present deemed consensual because the defendant could have ended the episode). I would find that the trial court clearly erred in finding that Spickard's initial encounter with defendant constituted an investigatory stop at which defendant was seized. *Shankle, supra*; *People v Darwich*, 226 Mich App 635, 637; 575 NW2d 44 (1997) (trial court's findings of fact on motion to suppress reviewed for clear error; ultimate decision reviewed de novo).

After defendant voluntarily gave his identification to Spickard, he began acting in a nervous manner, repeatedly attempted to place his hand in a large pocket on the side of his pants, and attempted to walk away from Spickard. Various persons told defendant that he could enter their homes, notwithstanding the fact that he did not live in the complex. Based on the totality of the circumstances, including the woman's hostile remark to defendant about him sitting on her porch steps, defendant's nervous behavior in a high-crime area, his making of furtive gestures, and his attempt to leave Spickard's presence before the LEIN check was completed, Spickard was entitled to transform the consensual encounter into an investigatory stop and briefly detain defendant until the LEIN check could be completed. *People v Oliver*, 464 Mich 184, 196, 200; 627 NW2d 297 (2001); *People v Shields*, 200 Mich App 554, 557; 504 NW2d 711 (1993). I would hold that the trial court erred in granting defendant's motion to suppress the evidence. *Darwich, supra*.

/s/ Joel P. Hoekstra