

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
June 21, 2012

v

CLEMENT GERARD RAMOS,
Defendant-Appellant.

No. 304149
Wayne Circuit Court
LC No. 10-011632-FH

Before: SERVITTO, P.J., and METER and FORT HOOD, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of carrying a concealed weapon, MCL 750.227. He was sentenced to 18 months' probation. Because the trial court did not err in denying defendant's motion to suppress, we affirm.

Defendant was pulled over shortly after 1:00 a.m. on October 23, 2010 while driving a green 1996 Dodge minivan. The sole basis for pulling defendant over was because his vehicle matched the description of a vehicle driven by suspected burglars who had committed a home invasion in the area within the previous two hours. As the officer effectuating the traffic stop approached defendant's vehicle, he observed defendant reach toward a bulge in his pocket. Defendant was ordered out of the vehicle, at which time it was discovered that he was carrying a concealed weapon in his waistband. Defendant did not have a permit for the weapon. Prior to trial, defendant moved to suppress evidence of the weapon, contending that the traffic stop was an unconstitutional search and seizure such that any evidence discovered as a result of the same must be suppressed. The trial court found the search to be constitutional and thus allowed the admission of the evidence.

On appeal, defendant claims that the trial court erred in denying his motion to suppress evidence because police lacked the reasonable suspicion necessary to perform an investigative stop of his vehicle. We disagree.

We review a trial court's findings of fact during a suppression hearing for clear error. *People v Roberts*, 292 Mich App 492, 502; 808 NW2d 290 (2011). A finding of fact is clearly erroneous if, after a review of the entire record, we are left with a definite and firm conviction that a mistake has been made. *Id.* A trial court's ultimate decision on a motion to suppress evidence is reviewed de novo. *Id.*

The right against unreasonable searches and seizures is guaranteed by both the United States and Michigan Constitutions. US Const, Am IV; Const 1963, art 1, § 11; *People v Corr*, 287 Mich App 499, 506; 788 NW2d 860 (2010). A search and seizure without a warrant is usually unreasonable, unless the search falls within one of the various exceptions to the warrant requirement. *People v Slaughter*, 489 Mich 302, 311; 803 NW2d 171 (2011). In *Terry v Ohio*, 392 US 1, 21, 30-31; 88 S Ct 1868; 20 L Ed 2d 889 (1968), the United States Supreme Court held that the Fourth Amendment permits an officer to make a brief investigative stop without a warrant, commonly called a “Terry stop.” See also *People v Steele*, 292 Mich App 308, 314; 806 NW2d 753 (2011). A Terry stop allows police to conduct a brief investigative stop of a motor vehicle based on a reasonable, articulable suspicion that the person is engaged in criminal activity. *Id.* at 314.

In determining the reasonableness of an investigatory stop, the Court must consider whether the facts known to the officer at the time of the stop would warrant an officer of reasonable precaution to suspect criminal activity. *Id.* The determination “must be founded on a particularized suspicion, based on an objective observation of the totality of the circumstances, that the person stopped has been, is, or is about to be involved in criminal wrongdoing.” *People v Chambers*, 195 Mich App 118, 121-122; 489 NW2d 168 (1992). The conclusion is drawn from an officer’s reasonable inferences based on the facts in light of his training and experience. *Steele*, 292 Mich App at 314. Deference should be given to the experience of law enforcement officers. *Id.* An officer’s reasonable suspicion may be based on information obtained from another officer. *Chambers*, 195 Mich App at 122. Fewer foundational facts are necessary to justify the stop of a moving vehicle than are required for a house, and a stop also requires fewer foundational facts than both a stop and search. *Steele*, 292 Mich App at 315; *People v Christie (On Remand)*, 206 Mich App 304, 308-309; 520 NW2d 647 (1994).

In this case, the police had reasonable suspicion to stop defendant’s vehicle. At the hearing on defendant’s motion to suppress evidence, Officer Timothy Simons testified that in the late evening of October 22, 2010 he investigated a home invasion that had occurred at approximately 11:20 p.m. that evening. While at the scene, witnesses reported that they had observed two people coming from the crime scene, and that the two individuals had left the scene in a dark green minivan. Simons testified that he reported that information over the police radio.

Officer Ian Severy testified that he heard the information concerning the home invasion and the suspect vehicle over the police radio. Severy testified that at approximately 1:10 a.m. on October 23, 2010, he was on patrol within a mile of where the home invasion occurred when he saw a green minivan driven by defendant. Severy testified that he believed the minivan may have been involved in the home invasion because it matched the description he received over the police radio from Simons. Severy thus stopped the vehicle just over a mile from where the home invasion occurred to investigate.

The facts and circumstances in this case are sufficient to provide Severy with reasonable suspicion that defendant was involved in the home invasion. Severy heard over the police radio that two men had fled after a home invasion in a green minivan. Less than two hours later, Severy observed two men in a green minivan just over a mile away from where the home invasion occurred. The description given over the police radio matched what Severy observed.

Given that it was 1:10 a.m., it is not likely that there were many vehicles on the street that matched the description given over the police radio. Based on the information Severy received, his observations, and the time of night, his suspicion that defendant may have been involved in the home invasion was not unreasonable.

While defendant contends that a significant amount of time passed from when the description of the minivan was given over the police radio and when Severy observed the vehicle so that it was unreasonable to suspect his vehicle as being involved in the home invasion, the fact that two hours had passed is not determinative. Reasonable suspicion must be determined by looking at the totality of circumstances, and there are other facts that justified Severy's belief that defendant was involved in criminal activity, such as the vehicle's close proximity to the crime scene and that the vehicle matched the description Severy received.

Defendant also argues that the vehicle's close proximity to the scene after two hours indicates that defendant was *not* involved in the crime, but that argument is not persuasive. A lay person may expect a criminal to flee from the area of a crime immediately, but Simons testified that it is common in breaking and entering situations for offenders to remain in the area of the crime. Deference must be given to the experience of law enforcement when making inferences from the facts. *Steele*, 292 Mich App at 315.

Finally, defendant argues that there are insufficient facts to justify an investigatory stop. However, fewer foundational facts are needed to perform an investigatory stop of a vehicle. *Id.* In this case, there were at least three objective facts available to Severy to justify his belief that defendant was involved in criminal activity: (1) defendant's vehicle was in close proximity to the location of the home invasion, (2) defendant was stopped less than two hours after the home invasion, and (3) defendant's vehicle matched the description of the vehicle used in the home invasion. Therefore, the police had a reasonable, articulable suspicion sufficient to justify the investigatory stop of defendant's vehicle. The trial court did not err in denying defendant's motion to suppress evidence.

Affirmed.

/s/ Deborah A. Servitto

/s/ Patrick M. Meter

/s/ Karen Fort Hood