

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
June 4, 2013

v

CORTEZ TORRES,

No. 308339
Wayne Circuit Court
LC No. 11-007320-FH

Defendant-Appellant.

Before: STEPHENS, P.J., and SAWYER and METER, JJ.

PER CURIAM.

Defendant Cortez Torres appeals as of right his convictions for felon in possession of a firearm, MCL 750.224f; carrying a concealed pistol, MCL 750.227(2); and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant to two concurrent sentences of 24 to 60 months' imprisonment for felon in possession of a firearm and carrying a concealed pistol, and to a consecutive sentence of 24 months' imprisonment for felony-firearm. We affirm.

Defendant's convictions arise out of his encounter with Detroit Police Officer Brandon Shortridge. Shortridge was at the scene of an unrelated homicide, assisting in managing the large crowd which had gathered. As Shortridge moved among the throng, he stopped to speak to an unidentified man who was standing next to defendant. Shortridge saw defendant, who was standing two feet away, make a cupping gesture around his pants pocket. Shortridge recognized the gesture as one commonly made by persons carrying a concealed weapon. Defendant immediately turned and walked away from Shortridge. When Shortridge followed, defendant broke into a run, moving away from the crowd.

Shortridge pursued defendant, keeping him in sight. After moving down the block, defendant turned and ran into a vacant lot. There, Shortridge saw defendant pull a pistol from his pants and toss it onto the ground near a tree stump. Shortridge used his radio to alert other nearby officers of the pistol and continued pursuing defendant. A short time later, defendant finally stopped and submitted to being handcuffed. When he was arrested, defendant falsely told the officers his name was Dana Maurice Beasley.

On appeal, defendant argues that the trial court erred in admitting evidence that he possessed a pistol, and that it should have been suppressed as the fruit of an unlawful seizure. Defendant did not preserve this claim of error by moving for suppression of the evidence with

the court below. *People v Unger*, 278 Mich App 210, 243; 749 NW2d 272 (2008). Accordingly, we review only for plain error. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999) (“To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights.”)

The United States and Michigan Constitutions each guarantee the right to be secure against unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11. The applicable provision of the Michigan Constitution is “construed to provide the same protection as that secured by the Fourth Amendment, absent compelling reason to impose a different interpretation.” *People v Collins*, 438 Mich 8, 25; 475 NW2d 684 (1991).

As a general rule, a person is seized when “in view of all the circumstances, a reasonable person would have believed that he was not free to leave.” *People v Jenkins*, 472 Mich 26, 32; 691 NW2d 759 (2005). However, where the person to be seized is fleeing, seizure requires either the officer’s use of physical force to restrain the suspect or the suspect’s submission to the officer’s show of authority. *California v Hodari D*, 499 US 621, 626; 111 S Ct 1547; 113 L Ed 2d 690 (1991). “[Seizure] does not remotely apply . . . to the prospect of a policeman yelling ‘Stop, in the name of the law!’ at a fleeing form that continues to flee.” *Id.*

“[S]eizures conducted without a warrant are unreasonable per se, subject to several specifically established and well-delineated exceptions.” *People v Champion*, 452 Mich 92, 98; 549 NW2d 849 (1996). One such exception allows a police officer to make a brief, investigatory stop if he has a reasonable suspicion that crime is afoot. *People v Oliver*, 464 Mich 184, 193; 627 NW2d 297 (2001). In determining whether an officer had a reasonable suspicion, the totality of the circumstances must be considered on a case-by-case basis. *People v Horton*, 283 Mich App 105, 109; 767 NW2d 672 (2009). “Deference should be given to the police officer’s experience and the known patterns of certain types of lawbreakers.” *People v Rizzo*, 243 Mich App 151, 156; 622 NW2d 319 (2000). “[N]ervous, evasive behavior is a pertinent factor in determining reasonable suspicion.” *Illinois v Wardlow*, 528 US 119, 124; 120 S Ct 673; 145 L Ed 2d 570 (2000).

The crux of defendant’s argument lies on his assertion that he was seized the moment Shortridge began his pursuit. We disagree. Defendant was never physically contacted by Shortridge until the very end of the pursuit. Moreover, defendant did not submit to Shortridge’s show of authority until the very end of the pursuit, when he stopped and allowed himself to be handcuffed. Defendant was, therefore, not seized at the outset of Shortridge’s pursuit, see *Hodari D*, 499 US at 626, but at the very end, after defendant had discarded his pistol.

The remainder of defendant’s argument, that Shortridge lacked reasonable suspicion to lawfully seize defendant at the outset of his pursuit, is irrelevant. Given the totality of the circumstances, Shortridge had sufficient knowledge to suspect that defendant was involved in criminal activity when defendant was actually seized, which was at the conclusion of the chase. Shortridge first saw defendant near the scene of a homicide. When Shortridge came near, defendant made a gesture which Shortridge recognized as suggesting that defendant was armed. Defendant attempted to avoid Shortridge by walking away and, when Shortridge followed, defendant broke into a run. Shortridge then saw defendant take a pistol from his pants and

discard it in a vacant lot. Given this knowledge, Shortridge could reasonably suspect that defendant had some unlawful association with the discarded pistol.

Because defendant was not seized in violation of his rights under the Fourth Amendment and the Michigan Constitution, we find that the court below did not err in admitting evidence obtained through his seizure. Accordingly, no plain error has occurred and we affirm defendant's convictions.

Defendant argues that the trial court improperly assessed him ten points under offense variable (OV) 19, MCL 777.49. Defendant properly preserved this issue by objecting to the trial court's assessment of ten points under OV 19. *People v Endres*, 269 Mich App 414, 417; 711 NW2d 398 (2006). Interpretation of the sentencing guidelines is a legal question we review de novo. *People v Smith*, 488 Mich 193, 198; 793 NW2d 666 (2010). "Scoring decisions for which there is any evidence in support will be upheld." *Endres*, 269 Mich App at 417.

Under OV 19, ten points must be scored if the offender interfered, or attempted to interfere, with the administration of justice. *People v Ericksen*, 288 Mich App 192, 203; 793 NW2d 120 (2010); MCL 777.49. Interference with the administration of justice has been broadly construed to go beyond acts constituting obstruction of justice and includes interference with law enforcement officers. *People v Barbee*, 470 Mich 283, 286, 288; 681 NW2d 348 (2004). Our Supreme Court has specifically held that giving a false name to law enforcement officers is an interference with the administration of justice, which may be scored under OV 19. *Id.* at 288.

The record here indicates that defendant admitted to giving the arresting officers a false name. On appeal, defendant's only argument is that he did not interfere with the homicide investigation; he makes no attempt to address his use of a false name. Because there is evidence supporting the trial court's scoring decision, it will be upheld. *Endres*, 269 Mich App at 417.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ David H. Sawyer
/s/ Patrick M. Meter