STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JONATHAN EUGENE MANN,

Defendant-Appellee.

UNPUBLISHED
December 29, 1998

No. 205373
Recorder's Court
LC No. 97-001037

Before: Holbrook, Jr., P.J., and O'Connell and Whitbeck, JJ.

PER CURIAM.

The prosecution appeals as of right from an order dismissing a charge of possession of 225 grams or more, but less than 650 grams, of cocaine, MCL 333.7403(2)(a)(ii); MSA 14.15(7403)(2)(a)(ii), after defendant's motion to suppress evidence was granted. We reverse and remand.

Not in dispute is that evidence seized in the course of a violation of a suspect's rights under the Fourth Amendment of the United States Constitution is subject to suppression at trial. See *People v Chapman*, 425 Mich 245, 252; 387 NW2d 835 (1986), citing *Mapp v Ohio*, 367 US 643; 81 S Ct 1684; 6 L Ed 2d 1081 (1961); *Wolf v Colorado*, 338 US 25; 69 S Ct 1359; 93 L Ed 1782 (1949). The question before us is whether the court below erred in ruling that the evidence at issue was discovered pursuant to violations of defendant's Fourth Amendment rights. This Court reviews a trial court's ruling regarding a motion to suppress for clear error. *People v Truong (After Remand)*, 218 Mich App 325, 334; 553 NW2d 692 (1996). "A decision is clearly erroneous if, although there is evidence to support it, the Court is left with a definite and firm conviction that a mistake has been made." *People v Vasquez (On Remand)*, 227 Mich App 108, 110; 575 NW2d 294 (1997). However, a trial court's application of constitutional standards is not entitled to the same deference as factual findings. *Truong*, *supra*, at 334. That is a question of law calling for de novo review. *People v Melotik*, 221 Mich App 190, 198; 561 NW2d 453 (1997).

In the case at bar, only one witness, a police lieutenant, testified at the suppression hearing, and the only specific finding made by the trial court on credibility was that the "lieutenant credibly indicated to me in response to my question that he probably did not tell the defendant he was free to go."

Further, it is apparent that the trial court gave no weight to the lieutenant's testimony that defendant did not have to stop and talk to him. However, the lieutenant's opinion in this regard is not material to the present controversy, because a seizure under the Fourth Amendment is not evaluated from the police officer's perspective. Rather, 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). The "reasonable person" for purposes of this inquiry is an "innocent person." See *Florida v Bostick*, 501 US 429, 438; 111 S Ct 2382; 115 L Ed 2d 389 (1991). The test is an objective one. *California v Hodari D*, 499 US 621, 628; 111 S Ct 1547; 113 L Ed 2d 690 (1991).

Where a police officer merely asks a person questions in a public place, there is no seizure. *People v Shabaz*, 424 Mich 42, 56-57; 378 NW2d 451 (1985). Circumstances that may indicate a seizure, even where the accosted person makes no effort to leave, include the threatening presence of several officers, the display of a weapon, some physical touching of the person, or the use of words or a tone of voice suggesting that compliance with the officer's request might be compelled. *People v Sasson*, 178 Mich App 257, 261; 443 NW2d 394 (1989), citing *United States v Mendenhall*, 446 US 544, 554-555; 100 S Ct 1870; 64 L Ed 2d 497 (1980) (Stewart, J.).

In the case at bar, the record does not suggest that defendant had any objective reasons to believe that he was not free to leave. Although defendant was approached by three police officers, the contact occurred in a public bus terminal, and there is no evidence that the officers acted in a manner that threatened or restrained defendant. Nor is there any suggestion that the officers produced weapons, touched defendant, or spoke with defendant in a manner indicating that defendant might be compelled to cooperate. Further, there was no evidence that defendant was anything but cooperative. Contrast *People v Bloxson*, 205 Mich App 236, 244; 517 NW2d 563 (1994) (Holbrook, Jr., P.J.) (a suspect's resistance to an officer's repeated requests weighs in favor of finding that the suspect was seized by the officer). Further, the police lieutenant's failure specifically to inform defendant that he was free to leave did not by itself transform the contact into a seizure under the Fourth Amendment. *Sasson, supra* at 262. Under these circumstances, we hold that the trial court erred in concluding that defendant was seized.

Similarly, in light of the totality of the circumstances, we hold that the trial court erred in finding a coerced search of defendant's duffel bag. All the evidence indicates that defendant freely and voluntarily consented to the search. "A consent can be valid even if the person is not apprised of his right to refuse consent." *People v Jordan*, 187 Mich App 582, 587; 468 NW2d 294 (1991).

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.
/s/ Peter D. O'Connell
/s/ William C. Whitbeck