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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 22, 2026 11:45 AM
v	No. 379121 Jackson Circuit Court
DELON MARTEASE BOULER, Defendant-Appellant.	LC No. 2025-004418-FH

Before: MARIANI, P.J., and FEENEY and TREBILCOCK, JJ.

PER CURIAM.

In this interlocutory appeal, defendant stands charged with one count of carrying a concealed weapon, MCL 750.227. The trial court denied defendant's motion to suppress evidence of the firearm found during a search of his person, and defendant now appeals by leave granted.[1] We reverse and remand for further proceedings consistent with this opinion.

I. FACTS

In April 2025, Jackson City Police Officer Emily Smith responded to "a weapons call from an anonymous caller," who stated that there were "juvenile," "mixed males" "waiving [sic] guns around" outside of a residence located at 506 McNeal Street before they entered the residence. Detectives, who also responded to that location, set up surveillance to observe the behavior of anyone who entered or exited the residence. One of the detectives eventually radioed that he had observed two males walking down the driveway between the residences located at 506 and 508 McNeal Street, who were "believed to come from the side door" of the 506 McNeal residence. Three officers, including Officer Smith, approached the two adult males, who informed the officers that they had just come from a residence located at 508 McNeal Street and were going to a store; defendant's companion produced identification confirming 508 McNeal Street as their address.

[1] *People v Bouler*, unpublished order of the Court of Appeals, entered March 6, 2026 (Docket No. 379121).

Officer Smith candidly conceded that she could see that neither defendant nor his companion were juveniles.

Body camera footage demonstrates that defendant and the other individual stood on the sidewalk and engaged in conversation with the officers.[2] During that time, defendant stood with his hands clasped together in front of his groin area. A fourth officer arrived on scene and immediately inquired whether either of the men had any weapons "or anything like that" on them and whether they minded if he checked them for weapons.[3] Defendant placed his hands out in front of his person in a defensive posture, backed away from the fourth officer, and informed the officer that he could not search him, while shaking his head in a negative manner to reaffirm his denial of the search request. The fourth officer ignored defendant's refusal to submit to a consensual search; instead, the officer approached defendant and ordered him to "hold still" as he reached out and grabbed defendant's left arm and hand. Another officer then grabbed defendant's right hand. At that point, defendant stated, "I do got a weapon." Officers proceeded to handcuff and search defendant, ultimately discovering a firearm in his jacket pocket.

After his bindover, defendant moved to suppress evidence of the firearm discovered during his arrest, arguing that the evidence failed to demonstrate reasonable suspicion justifying a stop and frisk under *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968). The trial court denied the motion, finding that

> the officers approached the defendant and another gentleman on the sidewalk, approximately a block from the area where the crime had been reported. And then, when the police approached him, he began to back away with his hands in his pockets.[4] And the officer testified at exam that they felt as though he was trying to find a way to escape; wouldn't take his hands out of his pocket; and they believed that they had a reasonable belief the subjects coming from the house may have been involved in the crime that was being committed.
>
> So I do think that based on a totality of the circumstances, the police did have a right to briefly detain and pat down the defendant, and a weapon was recovered during that pat-down.

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[2] When we have access to the same video that was presented to the trial court, we "need not rely on the trial court's conclusions as to what the video contains." *People v Kavanaugh*, 320 Mich App 293, 298; 907 NW2d 845 (2017). We can review a video "as easily as the trial court . . . ." *People v White*, 294 Mich App 622, 633; 823 NW2d 118 (2011).

[3] There is nothing in the record evidence explaining why the fourth officer responded to, and immediately took control of, the scene.

[4] Although Officer Smith testified that defendant "would not take his hands out of his pockets," the body camera footage clearly shows that defendant was standing with his hands clasped together in front of his groin area.

Defendant now appeals.

II. SEARCH AND SEIZURE

On appeal, defendant argues that officers did not have reasonable suspicion to believe that he was involved in any criminal activity or to justify a lawful seizure and search of his person, and even if they had reasonable suspicion to seize him, they did not possess reasonable suspicion to conduct a search of defendant's person because there was no basis to believe that defendant was armed. We agree.

A. STANDARD OF REVIEW

"This Court reviews for clear error a trial court's findings of fact made after a suppression hearing, but reviews de novo the ultimate decision on a motion to suppress." *People v Rodriguez*, 327 Mich App 573, 583; 935 NW2d 51 (2019). "A finding is clearly erroneous if it leaves this Court with a definite and firm conviction that the trial court made a mistake." *Id*. (quotation marks and citation omitted). "[I]f resolution of a disputed factual question turns on the credibility of witnesses or the weight of the evidence, we will defer to the trial court, which had a superior opportunity to evaluate these matters." *People v Sexton*, 461 Mich 746, 752; 609 NW2d 822 (2000). "We review constitutional questions de novo." *People v Sadows*, 283 Mich App 65, 67; 768 NW2d 93 (2009).

B. ANALYSIS

"The Fourth Amendment of the United States Constitution and its counterpart in the Michigan Constitution guarantee the right of persons to be secure against unreasonable searches and seizures." *People v Kazmierczak*, 461 Mich 411, 417; 605 NW2d 667 (2000). See US Const, Am IV; Const 1963, art 1, § 11. " '[A] police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest.' " *People v Pagano*, 507 Mich 26, 32; 967 NW2d 590 (2021), quoting *Terry*, 392 US at 22. "Colloquially, a brief detention of this sort is referred to as a *Terry* stop." *Pagano*, 507 Mich at 32.

> Under *Terry*, an officer can detain a citizen for a brief investigatory stop if the officer has reasonable suspicion that the citizen is engaged in, or is about to be engaged in, criminal activity. While the level of suspicion required for a *Terry* seizure is less than that required for probable cause to arrest, an officer must have more than an inchoate or unparticularized suspicion or hunch. Rather, a *Terry* seizure is only lawful if an officer has an objectively reasonable *particularized* suspicion that the specific individual being stopped is engaged in wrongdoing. Whether this standard is met in a particular case is fact-specific and requires an analysis of the totality of the circumstances known by the officer when the seizure occurred. [*People v Prude*, 513 Mich 377, 387; 15 NW3d 249 (2024) (quotation marks and citations omitted).]

"The subjective intent of the police officer is irrelevant to the validity of the stop." *People v Dillon*, 296 Mich App 506, 509; 822 NW2d 611 (2012). "The scope of any search or seizure must be

limited to that which is necessary to quickly confirm or dispel the officer's suspicion." *People v Barbarich*, 291 Mich App 468, 473; 807 NW2d 56 (2011).

"[T]here is no firearm exception to the *Terry* analysis," and "a tip alleging an illegal gun by itself is not sufficient to justify a stop and frisk." *People v Williams*, 351 Mich App 254, 269; 35 NW3d 638 (2024) (quotation marks and citation omitted). As observed in *People v Custer*, 465 Mich 319, 328; 630 NW2d 870 (2001),

> A police officer may perform a limited patdown search for weapons if the officer has a reasonable suspicion that the individual is armed, and thus poses a danger to the officer or to other persons. The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger. Reasonable suspicion entails something more than an inchoate or unparticularized suspicion or hunch, but less than the level of suspicion required for probable cause. In order to demonstrate reasonable suspicion, an officer must have specific and articulable facts, which, taken together with rational inferences from those facts, reasonably warrant the intrusion. [(Quotation marks and citations omitted.)]

As an initial matter, officers "had every right to seek a *consensual* encounter" with defendant and his companion on the public sidewalk to determine whether they had any knowledge of the reported criminal activity. *Prude*, 513 Mich at 391. But in order to detain him lawfully, the officers were required to have an objectively reasonable particularized suspicion that defendant and his companion were engaged in wrongdoing. *Id*.

Officers responded to "a weapons call from an anonymous caller," who stated that there were "juvenile" "mixed males" "waiving guns around" outside of a residence located at 506 McNeal Street before they entered the residence. Officer Smith candidly conceded that she could see that neither defendant nor his companion were juveniles, and that concession is supported by the body-camera footage. Additionally, although Officer Smith was not asked to clarify whether defendant and his companion were of mixed race, the body-camera footage reveals that the men were both black males, with nothing suggesting mixed-race ancestry. Moreover, when the men identified themselves, they indicated that they had come from 508 McNeal Street, not 506 McNeal Street. Accordingly, the information that the officers had *before* they conducted their search, which is the measuring factor for the reasonableness of their suspicion,[5] did not provide the officers with an objectively reasonable *particularized* suspicion that defendant was "engaged in, or about to be engaged in, criminal activity." *Prude*, 513 Mich at 387. The fact that defendant was later found to have a gun on his person does not suggest that the officers, before the frisk, had a reasonable basis for suspecting defendant of engaging in unlawful conduct. See *Florida v JL*, 529 US 266, 271; 120 S Ct 1375; 146 L Ed 2d 254 (2000); see also *Prude*, 513 Mich at 387.

[5] *Florida v JL*, 529 US 266, 271; 120 S Ct 1375; 146 L Ed 2d 254 (2000) ("The reasonableness of official suspicion must be measured by what the officers knew before they conducted their search.").

The circumstances were also insufficient to justify physically restraining and patting down defendant. Officer Smith testified that defendant "immediately started walking backwards" and "would not take his hands out of his pockets" when officers approached him. But the body camera footage demonstrates that defendant only began walking backward in response to the officers' attempt to search his person. Before that, defendant and his companion were standing and speaking with the officers, and at all times captured by the body-camera footage, defendant's hands were visible and out of his pockets. Defendant clearly informed the officers that he refused to submit to a consensual search. Nevertheless, the fourth officer approached defendant and ordered him to "hold still" as he reached out and grabbed defendant's left arm and hand. Another officer then grabbed defendant's right hand. At that point, defendant stated, "I do got a weapon." Officers proceeded to handcuff and search defendant, ultimately discovering a firearm in his jacket pocket. On this record, there is no evidence that the officers had a reasonable suspicion that defendant was armed or dangerous before they physically restrained him. See *Custer*, 465 Mich at 328.

We reverse the trial court's order denying defendant's motion to suppress and remand this case for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Philip P. Mariani
/s/ Kathleen A. Feeney
/s/ Christopher M. Trebilcock