STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v.

S. Ct. No. 125141
COA No. 240947
Circ. Ct. No. 01-1356 FH

SHAWN LEON JENKINS,

Defendant-Appellee,

_____/

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125141

DEFENDANT-APPELLEE'S RESPONSE
TO APPLICATION FOR LEAVE TO APPEAL

FILED

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MICHIGAN SUPREME COURT

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COUNTER-STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

I. Did the Court of Appeals properly characterize the police officers' initial actions as implicating Fourth Amendment protections without the requisite level of reasonable suspicion; and correctly conclude that the officers' subsequent actions based on "after-acquired suspicions" were not sufficient to justify a seizure that had already occurred?

Defendant-Appellee answers, "Yes."
Plaintiff-Appellant answers, "No."
The Circuit Court answered, "Yes."
The Court of Appeals answered, "Yes."

II. Did the Court of Appeals fail to address the reasonableness of the officer's investigation of the trespassing complaint?

Defendant-Appellee answers, "No."
Plaintiff-Appellant answers, "Yes."
The Circuit Court did not address the question.
The Court of Appeals answered, "No."

COUNTER-STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

Defendant accepts the Plaintiff-Appellant's Statement of Facts as modified and supplemented by the following:

Ann Arbor Police Officers Geoffrey Spickard and Jeff Lind were dispatched to the area of 729 North Maple Road, Ann Arbor, with reference to a group of fifteen to twenty subjects hanging out, being loud, and drinking in the area.[1]

Officer "Spickard testified that when he arrived, he witnessed a group of people, some in possession of alcohol, congregated outside in one of the common patio areas of the complex. Nonetheless, Spickard approached [D]efendant – who was neither loud nor in possession of alcohol – where he was sitting with another male on some nearby steps leading up to one of the housing units." [2] Officer Spickard and Lind observed Mr. Jenkins and the other male sitting on the steps of residential unit number 727, separate from everyone else, who was "sitting or standing around the [common patio] area".[3]

The officers walked directly to the steps where Mr. Jenkins was seated without contacting or stopping anybody else in the area. Four-and-a-half months earlier at the preliminary examination, Spickard testified that he approached Mr. Jenkins and the other male because he did not recognize them. However, at the evidentiary hearing, Officer Spickard stated that he approached them because he recognized the other male as a resident of the corresponding unit.[4]

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[1] *People v Shawn Jenkins*, unpublished opinion per curium of the Court of Appeals, decided November 18, 2003 (Docket No. 240947). See Appellant's Appendix A, Majority Opinion, p1.
[2] See Plaintiff-Appellant's Appendix A, Majority Opinion, p1.
[3] See Plaintiff-Appellant's Appendix B, Evidentiary Hearing Transcript, p20.
[4] See Plaintiff-Appellant's Appendix A, Majority Opinion, p1.

The Appellant referenced an unidentified woman as "an apparent resident." [5] She briefly opened the door of 727 North Maple and allegedly accused Mr. Jenkins of trespassing. Yet, Officer Spickard testified that he did not know who she was. He never interviewed her, never verified where she lived, or even learned her name.[6]

Officer Spickard then asked Mr. Jenkins for identification and attempted to request a LIEN check. However, the LEIN channel was "busy," which prevented Officer Spickard from being able to get through promptly with the name.[7] Throughout the entire encounter, Officer Spickard testified he retained possession of Mr. Jenkins' ID card and would have refused to hand it back over, even if Mr. Jenkins had requested it be returned.[8]

Spickard testified that it was after he requested the LEIN check, as the wait increased, that Mr. Jenkins began to appear nervous by repeatedly attempting to put his hand in his front pants pocket.[9] Significantly, there was no testimony that Officer Spickard saw any sort of bulge indicating the presence of a weapon in Mr. Jenkin's pants.[10] Moreover, neither Officer Spickard nor Officer Lind made any efforts at that time to investigate whether Mr. Jenkins possessed any weapons by patting Mr. Jenkins down, asking him if he had weapons or otherwise.[11]

When some of the other people in the courtyard told Mr. Jenkins that he could come into their homes, Mr. Jenkins began to walk away from the police officers towards the parking lot area where the police had left their patrol car.[12] Officer Spickard still retained Mr. Jenkin's

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[5] See Plaintiff-Appellant's Application for Leave to Appeal, p1.
[6] See Plaintiff-Appellant's Appendix B, Evidentiary Hearing Transcript, pp23-24.
[7] See Plaintiff-Appellant's Appendix B, Evidentiary Hearing Transcript, pp7-8.
[8] See Plaintiff-Appellant's Appendix B, Evidentiary Hearing Transcript, p28.
[9] See Plaintiff-Appellant's Appendix A, Majority Opinion, p2.
[10] Record, passim.
[11] Record, passim.
[12] See Plaintiff-Appellant's Appendix A, Majority Opinion, p2.

identification and intentionally made no efforts to return it.[13] Instead, both officers walked alongside of Mr. Jenkins, repeatedly "encouraging" him to wait in the area until they could call in his name and get the results of the LEIN check.[14]

As Mr. Jenkins reached the parking lot, two other women began talking to the Defendant. Mr. Jenkins stopped heading toward the patrol car and began walking away from the officers.[15] It was at that point, Spickard stated, "that he put his hand in the small of [D]efendant's back and told him he was not free to leave."[16]

The results of the LEIN check were finally radioed to the officers indicating an outstanding traffic warrant.[17] As Officer Spickard began to handcuff Mr. Jenkins in response to the warrant information, a handgun fell from Mr. Jenkin's waistband to the ground.[18] It is important to note that the officers never made any efforts, at any point between receiving the LEIN results and handcuffing Mr. Jenkins, to investigate whether Mr. Jenkins possessed any weapons by patting him down, asking him if he had weapons or otherwise.[19]

The circuit court granted Defendant's motion to suppress the handgun with the following observations:

> I'm going to find that the police officer restrained the Defendant at the time he asked for the i.d. His testimony, very frankly, was that the Defendant was not free to leave at the time he asked for his identification. <u>The officer took his identification. Then there was a sort of, I don't know, walk away and follow away afterwards.</u> But the reality is that the seizure was made at the time he was restrained. And there was at that point in time no reasonable basis for the officer to do so.[20]

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[13] See Plaintiff-Appellant's Appendix B, Evidentiary Hearing Transcript, p9, 27-28.
[14] See Plaintiff-Appellant's Appendix A, Majority Opinion, p2.
[15] See Plaintiff-Appellant's Appendix B, Evidentiary Hearing Transcript, p10.
[16] See Plaintiff-Appellant's Appendix A, Majority Opinion, p2.
[17] See Plaintiff-Appellant's Appendix B, Evidentiary Hearing Transcript, p11.
[18] See Plaintiff-Appellant's Appendix A, Majority Opinion, p2.
[19] Record, <u>passim</u>.
[20] See Plaintiff-Appellant's Appendix B, Suppression Hearing Transcript, p4 (emphasis added).

The Court of Appeals affirmed the circuit court, holding that there is, in this instance, objective evidence to support finding an investigatory stop; and Officer Spickard had seized Mr. Jenkins without the proper level of suspicion. Therefore, the evidence was, in fact, illegally obtained and the circuit court was correct to grant Defendant's motion to suppress the evidence and to dismiss the case.[21]

[21] See Plaintiff-Appellant's Appendix A, Majority Opinion, p3.

ARGUMENT

I. THE COURT OF APPEALS CORRECTLY RULED THAT THE POLICE LACKED THE REQUISITE REASONABLE SUSPICION TO CONDUCT A FULL-SCALE INVESTIGATORY STOP. FURTHERMORE, THE COURT OF APPEALS PROPERLY HELD THAT THE OFFICERS' SUBSEQUENT ACTIONS BASED ON "AFTER-ACQUIRED SUSPICIONS" WERE INSUFFICIENT TO JUSTIFY THE SEIZURE THAT HAD ALREADY OCCURRED.

Counter – Statement of the Standard of Review

In their appeal before this Court, the Plaintiff-Appellant's application must show that the decision of the Court of Appeals is clearly erroneous and will cause material injustice.[22] A Court of Appeals will not reverse a trial court's factual findings regarding a motion to suppress evidence unless they are clearly erroneous.[23]

The principal components of a determination of reasonable suspicion or probable cause will be the events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion or to probable cause.[24] "We therefore hold that as a general matter, determinations of reasonable suspicion and probable cause should be reviewed *de novo* on appeal. Having said this, we hasten to point out that a reviewing court should take care both to review findings of historical fact only for clear error and to give due weight to inferences drawn from those facts by resident judges and local law enforcement officers."[25]

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[22] MCR 7.302(B)(5)
[23] People v Oliver, 464 Mich 184, 191; 627 NW2d 297 (2001), People v Harrington, 259 Mich App 703, 705-706; 672 NW2d 344 (2003).
[24] Ornelas v United States, 517 US 690, 696; 116 S Ct 1657; 134 L Ed 2d 911, 919-920 (1996).
[25] Id, 699.

Discussion

A. Officer Spickard seized Mr. Jenkins subject to the requirements of the Fourth Amendment at the time he asked for Mr. Jenkins' identification.

The circuit court held, and the Court of Appeals affirmed, that Mr. Jenkins was seized at the time Officer Spickard requested his identification.[26] The appropriate inquiry in determining whether a stop has been made is whether, "taking into account all of the circumstances surrounding the encounter, the police conduct would have communicated to a reasonable person that he was not" free to leave.[27]

Clearly, Officer Spickard seized Mr. Jenkins when he approached him and asked for his identification. In fact, as both the trial and appellate court noted, Officer Spickard testified that Mr. Jenkins was never free to leave. He testified that if Mr. Jenkins had tried to run, he would have tried to run after him. Further, Officer Spickard testified that he kept Mr. Jenkins' identification, verbally encouraged him to stay while the LEIN check was done, and finally physically guided him to the police car before the result was known.[28]

By finding that Officer Spickard seized Mr. Jenkins when the officer "asked" for the identification, the trial judge necessarily concluded that a reasonable person in Mr. Jenkins' position would not feel free to simply ignore the request, get up off the steps, brush between the two uniformed officers and walk away.

Perhaps there are some reasonable people faced with Mr. Jenkins' circumstances who would feel free to leave. But, most reasonable people would consider themselves obliged by the circumstances to turn over their identification. And, there is a large amount of case law

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[26] See Plaintiff-Appellant's Appendix A, Majority Opinion, p2, See also Plaintiff-Appellant's Appendix B, Suppression Hearing Transcript, p4.
[27] Florida v Bostick, 501 US 429,434; 111 S Ct 2382; 115 L Ed 2d 389 (1991)
[28] See Plaintiff-Appellant's Appendix A, Majority Opinion, p3.

supporting the Court of Appeal's holding that a reasonable person in Mr. Jenkins' place would not have considered himself free to leave once Officer Spickard requested and obtained Mr. Jenkins' identification and refused to return it. United States v Jordan, 294 US App DC 227; 958 F2d 1085,1087 (1992).

> "Our court has also considered on several occasions the effect on citizens stopped by the police of being asked to hand over critical identification or travel documents and having the police retain them while questioning ensues, noting that "once the identification is handed over to police and they have had a reasonable opportunity to review it, if the identification is not returned to the detainee [it is] difficult to imagine that any reasonable person would feel free to leave without it." United States v. Battista, 876 F.2d 201, 205 (D.C.Cir.1989); see also United States v. Lewis, 921 F.2d 1294, 1297 (D.C.Cir.1990) ("whether the officer ... retained [defendant's] identification or travel ticket" is a "relevant factor" in seizure analysis); United States v. Savage, 889 F.2d 1113, 1117 n. 3 (D.C.Cir.1989) ("failing to return a traveler's ticket after sufficient time to peruse it had elapsed [may] be tantamount to a detention" if it prevents traveler "from going about his 'ordinary business' "). [2]
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> [2] Other circuits have also stated that police withholding of a person's identification conveys a definite message that the person is not free to leave. See, e.g., United States v. Cordell, 723 F.2d 1283, 1285 (7th Cir.1983), cert den 465 U.S. 1029 (1984) (seizure occurred when policeman handed defendant's license and ticket to another policeman and continued questioning); United States v. Thompson, 712 F.2d 1356, 1359 (11th Cir.1983) (questioning of person while in his car "matured into" a seizure when police retained his driver's license after examining it); United States v. Waksal, 709 F.2d 653, 660 (11th Cir.1983) ("We fail to see how appellant could have felt free to walk away from police officers when they still possessed [his ticket and driver's license].").

The People cannot argue that this was merely a consensual encounter because Officer Spickard had three alternatives, short of detention, when he approached Mr. Jenkins: (1) he should have allowed Mr. Jenkins to leave from the beginning of the encounter; (2) he should have allowed him to leave once he was shown a facially valid Michigan State Identification card;

and (3) he should have asked more questions before demanding that Mr. Jenkins hand over his identification.

While perhaps none of the facts of this encounter taken individually is sufficiently compelling to mandate such a conclusion, considering the totality of all the circumstances at the time Officer Spickard sought Mr. Jenkins identification, this Court should affirm the Court of Appeals and determine that Officer Spickard had made a sufficient showing of official authority; and the circumstances were sufficiently compelling that a reasonable person in Mr. Jenkins' place would not have considered himself free to leave.

B. At the time he requested Defendant's identification, constituting seizure of Mr. Jenkins, Officer Spickard lacked the requisite level of reasonable suspicion to conduct a full-scale investigatory stop.

The circuit court held, and the Court of Appeals affirmed that Mr. Jenkins was seized at the time Officer Spickard requested his identification without the requisite objective and articulable evidence to support a reasonable suspicion that Mr. Jenkins was involved in criminal activity.[29]

Where police have reasonable suspicion that criminal activity is afoot, they may temporarily detain a suspect to further investigate the matter.[30] "Reasonable suspicion" is more than an ill-defined hunch; it must be based upon 'a particularized and objective basis for suspecting the particular person . . . of criminal activity.[31] It requires "specific and articulable

[29] See Plaintiff-Appellant's Appendix A, Majority Opinion, p2, See also Plaintiff-Appellant's Appendix B, Suppression Hearing Transcript, p4.
[30] Terry v Ohio, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968), See also Plaintiff-Appellant's Appendix A, Majority Opinion, p2.
[31] United States v Cortez, 449 US 411, 417-18; 101 S Ct 690; 66 L Ed 2d 621 (1981), See also Plaintiff-Appellant's Appendix A, Majority Opinion, p2 (quoting People v Shields, 200 Mich App 554, 557; 504 NW2d 711 (1993).

facts which, taken together with rational inferences from those facts, reasonably warrant' an investigatory stop.[32]

In People v Freeman, two police officers approached a lone automobile idling with its parking light on at 12:30 a.m. in a private parking lot adjoining the Hazel Park Race Track. The officers approached the car and asked the defendant, who was alone and occupied the driver's seat, to leave the vehicle and to produce identification and a registration. Ultimately, a pistol was found in the vehicle for which the defendant was convicted and which the Court of Appeals affirmed. However, this Court reversed, finding that "Freeman was 'seized' within the meaning of the Fourth Amendment *when the police officers asked him to leave his automobile and to produce identification.*[33]

In order to properly analyze the material facts at issue in the immediate case, it is necessary to compare them to the court's analysis of the facts in Freemen. On August 23, 2001, Officer Spickard received a dispatch for 15-20 people being loud and drinking in front of 729 N. Maple. Officer Spickard and his partner responded within 15 minutes and saw many individuals drinking in the courtyard. After scanning the crowd, Officer Spickard determined that he knew most of the people except for Mr. Jenkins, who was sitting on the steps of 727 N. Maple. Mr. Jenkins was not drinking, he was not the subject of the dispatch and was the last person that Officer Spickard should have harassed. Regardless of his purpose, Officer Spickard approached Mr. Jenkins solely because he did not recognize him; this is not a reasonable, articulable suspicion that he was engaged in criminal activity.

Both the Michigan Supreme Court and the United States Supreme Court have held this to be illegal. The Michigan Supreme Court has ruled that an investigatory stop complies "with the

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[32] Terry, supra, 21, United States v Erwin, 155 F3d 818, 822 (CA 6, 1998), cert denied, 525 US 1123 (1999).
[33] People v Freeman, 413 Mich 492,493-495; 320 NW2d 878 (1982), (emphasis added).

reasonableness requirement of the Fourth Amendment only if the police 'have an articulable basis for suspecting criminal activity."[34] The Court must determine the officer's reasonableness on a case-by-case basis while evaluating the totality of the circumstances.[35] The United States Supreme Court attempted to assure "that an individual's reasonable expectation of privacy is not subject to arbitrary invasions solely at the unfettered discretion of officers in the field."[36] The Court of Appeals recognized this requirement in their opinion: "an 'inchoate' or 'unparticularized suspicion or hunch' is an insufficient basis for reasonable suspicion."[37]

The Appellant would have this Court believe "both the Majority [of the Court of Appeals] and the Dissent agreed that the circuit court erred in relying on the officers' subjective belief that Defendant was not free to leave."[38] This is not an accurate interpretation of the Majority's analysis. The Court of Appeals noted, in its decision, that Officer Spickard acknowledged he would not have allowed Mr. Jenkins to go free until the conclusion of a LEIN check.[39]

However, the Court of Appeals was actually clarifying the rule of law by explaining that an officer's subjective intent most assuredly is relevant "to the extent that that intent has been conveyed to the person confronted."[40] Therefore, although an officer's subjective suspicions "do not dictate whether an encounter was consensual,"[41] they are very relevant to the extent that a reasonable person in Mr. Jenkins' circumstances very likely would find that Officer Spickard's

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[34] Id, p495 (citations omitted).
[35] People v Jordan, 187 Mich App 582, 586; 468 NW2d 294 (1991).
[36] Brown v Texas, 443 US 47,51; 99 S Ct 2637; 61 L Ed 2d 357 (1979) (citation omitted).
[37] See Plaintiff-Appellant's Appendix A, Majority Opinion, p2 (quoting United States v Sokolow, 490 US 1, 7; 109 S Ct 1581; 104 L Ed 2d 1 (1989).)
[38] See Plaintiff-Appellant's Application for Leave to Appeal, pp5-6.
[39] See Plaintiff-Appellant's Appendix A, Majority Opinion, p2.
[40] United States v Waldon, 206 F3d 597, 603 (CA 6, 2000), quoting United States v Rose, 889 F2d 1490, 1493 (CA 6, 1989), citing United States v Mendenhall, 446 US 544, 554 n6; 64 L Ed 2d 497; 100 S Ct 1870 (1980) (emphasis added).
[41] See Plaintiff-Appellant's Appendix A, Dissenting Opinion, p1 (also quoting Waldon, supra, p603)

intent to detain Mr. Jenkins had been clearly conveyed to the Defendant. The Court of Appeals also stated that the experience of law enforcement officers and their assessments should be deferred to.[42]

Obviously, an officer's subjective intention to detain a citizen can animate a "request" converting it into a show of authority even if the officer, or the court, continues to characterize the officer's actions as a request. The Supreme Court ruled, in Freeman,[43] that the defendant had been seized "when the officers asked him to leave his automobile and to produce identification," noting specifically that the defendant was not free to go "until I found out who he was and why he was parked there."

Officer Spickard could have and should have asked Mr. Jenkins why he was there, which was to visit his two daughters who lived in the complex. Officer Spickard could have simply asked him to leave, which may have been appropriate under the circumstances. If Officer Spickard's basis for detaining Mr. Jenkins was the fact that he did not know him from before, either one of these two remedies would have been more appropriate and would not have been as intrusive as running a LIEN check upon receipt of a facially valid Michigan State Identification from a cooperative citizen. Since Mr. Jenkins was stopped in violation of his rights under the Fourth Amendment, any tangible evidence were the tainted fruits of a Fourth Amendment violation and must therefore be suppressed.[44]

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[42] See Plaintiff-Appellant's Appendix A, Majority Opinion, p2, quoting People v Oliver, 464 Mich 184,196, 200; 627 NW2d 297 (2001).
[43] Freeman, supra, p494-495, n3 (1982).
[44] Taylor v Alabama, 457 US 687; 102 S Ct 2664; 73 L Ed 2d 314 (1982), Wong Sun v United States, 371 US 471; 83 S Ct 407; 9 L Ed 2d 441 (1963), Freeman, supra, 497.

C. Officer Spickard's subsequent actions constituted a seizure, which the Court of Appeals found to be based on "after-acquired suspicions" not sufficient to justify a seizure that has already occurred.

Both the Court of Appeals majority opinion and dissenting opinion held that the officers' subsequent actions did constitute a seizure. The Majority stated: "We additionally agree with the trial court that the officer's susbsequent actions constituted a seizure. The undisputed objective evidence reflects that when Defendant tried to leave the area, the officers followed him and continually told him to wait for the LEIN results."[45] However, the dissent found that, based on the totality of the circumstances,[46] the officer "was entitled to transform the consensual encounter into an investigatory stop."[47]

The majority opinion of the Court of Appeals ruled correctly that the officers still lacked the requisite level of reasonable suspicion because Mr. Jenkins was detained at the time the officer asked for his identification. Therefore, all the behavior the dissent found to be reasonably suspicious were "after-acquired suspicions". The Court of Appeals specifically stated that "although Spickard testified that his suspicions were further developed while the officers followed [D]efendant, such after-acquired suspicions do not suffice to justify a seizure that has already occurred."[48]

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[45] See Plaintiff-Appellant's Appendix A, Majority Opinion, p3.

[46] Totality of the Circumstances Dissent Listed:

- The Officer's finding that Mr. Jenkins began acting nervously.
- Mr. Jenkins repeatedly putting his hands in pockets.
- Mr. Jenkins attempt to walk away after handing over his identification.
- The fact that other apparent residents began inviting Mr. Jenkins to enter their homes.
- The woman's alleged trespass complaint.
- The housing complex was in a "high-crime area".

See Plaintiff-Appellant's Appendix A, Dissenting Opinion, p2.

[47] See Plaintiff-Appellant's Appendix A, Dissenting Opinion, p2.

[48] See Plaintiff-Appellant's Appendix A, Majority Opinion, p3.

II. GIVEN THE LACK OF ANY SPECIFIC ACCUSATION OR COMPLAINT FROM THE UNIDENTIFIED WOMAN, THE COURT OF APPEALS ADEQUATELY ADDRESSED, AND PROPERLY REJECTED, THE REASONABLENESS OF THE OFFICER'S INVESTIGATION OF THE TRESPASS COMPLAINT.

Standard of Review

In their appeal before this Court, the Plaintiff-Appellant's application must show that the decision of the Court of Appeals is clearly erroneous and will cause material injustice.[49]

Discussion

Even if it was reasonable for the officer to conclude, on the basis of his experience and common sense, that the unidentified woman was the porch steps' occupant or agent of the steps' owner and occupant, it is clear from the language the woman used ("Who … are you and why are you on my porch?") that she neither told Mr. Jenkins to leave ("Get off my porch") nor referred to a time in the past that she had done so ("I thought I told you to get off my porch"). Without any indication that Mr. Jenkins had been previously prohibited from returning to the steps, Officer Spickard simply assumed that essential fact.

This assumption was not justified by either the circumstances or the officers' experience. It was simply a hunch. This is especially so when one considers that the unidentified woman never said a word to either of the two uniformed officers who were standing at the foot of the porch steps. After all, if the woman really thought that Mr. Jenkins was breaking the law, it seems reasonable to conclude that she would have mentioned it to the police. Her failure to complain to the officers standing right in front of her is some indication that she felt that Mr. Jenkins was not committing a crime.

Another point that the Plaintiff-Appellant and the Dissenting Opinion of the Court of Appeals relies upon to justify the seizure of Mr. Jenkins as reasonable is that while Officer

[49] MCR 7.302(B)(5)

Spickard was investigating Mr. Jenkins for the alleged trespassing, some of the other people in the courtyard, whom Officer Spickard presumably recognized as residents of the housing complex, told Mr. Jenkins that he could come into their homes[50]. Open invitations from residents are hardly indications of trespassing.

Under all these circumstances, Officer Spickard had nothing more than an inchoate and unparticularized suspicion that Mr. Jenkins had been previously ordered not to return to the steps. Yet, he concluded that criminal activity was afoot (i.e., that Mr. Jenkins was trespassing). Given the inchoate nature of the woman's remarks to Mr. Jenkins, this conclusion was not supported by particularized and objective facts. The woman's remarks were too vague to justify a reasonable suspicion that Mr. Jenkins was trespassing. This Court explained in Freeman, that "merely entering the private property of another is not an offense unless one has been forbidden to do so or refuses to depart after having been told to do so by a proper person.[51]

Officer Spickard could only have stopped Mr. Jenkins lawfully if, given the circumstances, he could reasonably conclude that Mr. Jenkins had been previously and effectively ordered not to return to the steps. The exclamation by the unidentified woman was not sufficiently particularized or objective to justify that conclusion and the officers' failure to take steps to develop that information before stopping Mr. Jenkins was unreasonable.

The Court of Appeals found no "specific or articulable facts supporting a reasonable suspicion that [D]efendant was involved in criminal activity" (i.e., the alleged trespass claim). Furthermore, Mr. Jenkins displayed no "signs of evasive or otherwise suspicious behavior".[52]

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[50] See Plaintiff-Appellant's Appendix A, Dissenting Opinion, p2.
[51] See MCL 750.552, Freeman, supra, 496-497.
[52] See Plaintiff-Appellant's Appendix A, Majority Opinion, pp2-3, See also People v Oliver, 464 Mich 184, 194; 627 NW2d 297 (2001), People v Nelson, 443 Mich 626, 631; 505 NW2d 266 (1993).

Given all the circumstances at the time they seized Mr. Jenkins and sought his identification, the officers lacked reasonable suspicion, based on particularized objective facts, that Mr. Jenkins was trespassing. Officer Spickard's hunch that Mr. Jenkins had previously been told not to return to the complex was not based on adequate information. Although not dispositive, the hunch turned out to be incorrect. Officer Spickard never did develop any information that Mr. Jenkins had been trespassing[53]. Accordingly, the circuit court and the Court of Appeals did not err when it concluded that there was no reasonable basis for Officer Spickard to stop Mr. Jenkins. Therefore this Court should affirm the decision below.

[53] See Plaintiff-Appellant's Appendix B, Evidentiary Hearing Transcript, p25.

RELIEF REQUESTED

Defendant-Appellee respectfully requests this Court deny leave to appeal.

Respectfully submitted,

Lloyd E. Powell (P-19054)

By:
Timothy R. Niemann (P-39238)
First Assistant Public Defender

Date: March 3, 2004