

Order

Michigan Supreme Court
Lansing, Michigan

November 3, 2023

Elizabeth T. Clement,
Chief Justice

165233

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

v

SC: 165233
COA: 360693
Wayne CC: 21-003294-FH

JEFFERY SCOTT ARMSTRONG,
Defendant-Appellee.

On order of the Court, the application for leave to appeal the November 22, 2022 judgment of the Court of Appeals is considered. We direct the Clerk to schedule oral argument on the application. MCR 7.305(H)(1). The parties shall file supplemental briefs in accordance with MCR 7.312(E), addressing: (1) whether the Michigan Regulation and Taxation of Marihuana Act (MRTMA), MCL 333.27951 *et seq.*, supersedes the rule that “the smell of marijuana alone by a person qualified to know the odor may establish probable cause to search a motor vehicle, pursuant to the motor vehicle exception to the warrant requirement,” *People v Kazmierczak*, 461 Mich 411, 426 (2000) (footnote omitted); (2) if so, whether the exclusionary rule applies to searches conducted in good-faith reliance upon *Kazmierczak*, see *Davis v United States*, 564 US 229, 241 (2011); (3) alternatively, if the holding of *Kazmierczak* has been superseded by the MRTMA, whether the smell of marijuana alone may establish reasonable suspicion to perform an investigatory stop pursuant to *Terry v Ohio*, 392 US 1 (1968); and (4) if so, whether the trial court clearly erred in concluding that the firearm recovered in this case was not in plain view during an otherwise constitutional *Terry* stop. See *People v Champion*, 452 Mich 92 (1996).

The Prosecuting Attorneys Association of Michigan and the Criminal Defense Attorneys of Michigan are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 3, 2023

Clerk