

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SAMUEL BEENE,

Defendant-Appellant.

UNPUBLISHED

April 25, 1997

No. 189538

Midland Circuit Court

LC No. 94-0457-FH

Before: Taylor, P.J., and Hood and Gribbs, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), resisting and obstructing a police officer, MCL 750.479; MSA 28.747, and assault and battery, MCL 750.81; MSA 28.276. Defendant was sentenced to twenty-four months' probation for the possession conviction, four months in jail for the resisting and obstructing conviction, and ninety days in jail for the assault and battery conviction. Defendant appeals as of right. We affirm.

Defendant asserts that evidence of the cocaine should have been suppressed because he was unlawfully seized without probable cause or reasonable suspicion pursuant to the Fourth Amendment. We disagree.

The Fourth Amendment protects citizens from unreasonable searches and seizures. *People v Shabaz*, 424 Mich 42, 52; 378 NW2d 451 (1985). The reasonableness of a Fourth Amendment seizure balances the governmental interest that justifies the intrusion against an individual's right to be free of arbitrary police interference. *Terry v Ohio*, 392 US 1, 20-21; 88 S Ct 1868; 20 L Ed 2d 889 (1968). In *Maryland v Wilson*, ___ US ___; 65 USLW 4124 (1997), the United States Supreme Court recently held that law enforcement officers may require passengers to get out of a vehicle they have properly stopped for a traffic law violation.

After making a traffic stop (for speeding) of a car in which defendant was a passenger, the police had defendant get out of the vehicle upon noticing his nervousness. This was permissible. *Id.*

When the police sought the voluntary cooperation of defendant through noncoercive questioning, defendant escalated the encounter by striking Officer Wu, who along with Officer Baumgart, had made the traffic stop. The officers testified that when defendant first stepped out of the car, Wu asked defendant a routine question, defendant assaulted Wu by hitting him in the chest, and then defendant started to run away. After the officers tackled defendant, he resisted arrest. Defendant was searched incident to his arrest, and the police found eleven “rocks” of crack cocaine, a pager, and \$220 in cash. We conclude that the officers were justified in searching defendant’s person incident to the valid arrest. *People v Catanzarite*, 211 Mich App 573, 581; 536 NW2d 570 (1995). Therefore, the trial court properly refused to suppress the evidence.

Defendant next argues that, because he was not bound over by the district court for assault and battery after his preliminary examination, the circuit court lacked jurisdiction to try and convict defendant for assault and battery. We disagree.

A trial court can amend the indictment to add a new charge following the preliminary examination, provided that the preliminary examination supplied probable cause for the new charge, and the proofs presented at the preliminary examination served to negate any unfair surprise or inadequate notice connected to the new charge. *People v Fortson*, 202 Mich App 13, 15-17; 507 NW2d 763 (1993). In this case, Officer Wu testified that defendant hit him with his elbow and then ran. The district court bound defendant over on a charge of resisting and obstructing a police officer on the basis on defendant’s assault on Officer Wu. However, the assault and battery count was added after the preliminary examination. An added charge of assault and battery based on the conduct testified to and discussed at the preliminary examination could have been no surprise at all to defendant. In addition, the added count did not involve any new facts. The trial court did not commit jurisdictional error in convicting defendant of an added count of assault and battery. *Fortson, supra* at 16-17.

Affirmed.

/s/ Clifford W. Taylor

/s/ Harold Hood

/s/ Roman S. Gibbs