

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

VINCENT SHAWN ALLEN,

Defendant-Appellant.

UNPUBLISHED

November 25, 1997

No. 194683

Ottawa Circuit Court

LC No. 95-019221

Before: Jansen, P.J., and Fitzgerald and Young, JJ.

MEMORANDUM.

Following a one-day bench trial, defendant was convicted as charged of resisting a police officer in the lawful performance of his duty, MCL 750.479; MSA 28.747, and possession of marijuana, MCL 333.7403(1) and (2); MSA 14.15(7403)(1) and (2)(d), and sentenced to twelve months probation. Defendant appeals as of right. We affirm.

Defendant argues that the magistrate erroneously bound him over for trial in the circuit court. He argues that there was no legitimate basis for the police stopping him in the first instance and attempting to perform a pat-down search of his person and, therefore, defendant could lawfully resist the illegal search of his person. He also argues that had he not been illegally stopped and searched, the officers would not have discovered the marijuana.

Defendant was not subjected to a “stop” within the meaning of *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968). Defendant was not detained by the police where defendant initiated the extended contact with the officers and refused to leave the scene of the vehicle search, even after being informed by an officer that he would be subject to a pat-down search for weapons if he chose to remain. *People v Laube*, 154 Mich App 400, 406-408; 397 NW2d 325 (1986).

Additionally, the pat-down search was permissible where, during defendant’s voluntary presence near the vehicle being searched, the officers observed behavior which led them to reasonably conclude that defendant might be presently armed and a threat to their safety. *Laube, supra*, pp 409-410.

Affirmed.

/s/ Kathleen Jansen

/s/ E. Thomas Fitzgerald

/s/ Robert P. Young, Jr.