

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

EDWARD LEE MASON,

Defendant-Appellant.

UNPUBLISHED

February 8, 2005

No. 250885

Oakland Circuit Court

LC No. 2003-007960-AR

Before: Zahra, P.J., and Neff and Cooper, JJ.

MEMORANDUM.

Plaintiff appeals on leave granted the circuit court order denying the delayed application for leave to appeal the district court's decision not to bind defendant over for trial for resisting and obstructing a police officer, MCL 750.81d. We reverse. This case is being decided without oral argument pursuant to MCR 7.214(E).

Police officers questioned and frisked defendant in a known drug-dealing area in Pontiac, found nothing, then put him in their cruiser to investigate further suspicions of illegal drug activity. The police then learned through the LIEN system that defendant was wanted on two outstanding arrest warrants, and informed defendant that he was under arrest. Defendant responded with extensive verbal and physical resistance before he was subdued. The district court refused to bind defendant over for trial for resisting and obstructing, expressing concerns whether the initial *Terry*¹ stop, or subsequent additional detention, were proper. The circuit court, in declining to grant leave to appeal, opined that the *Terry* stop was legal, but that the subsequent detention was not.

In fact, this Court need not decide whether either detention was lawful. Where the police have improperly detained a suspect but then discover that the suspect is subject to arrest for reasons unrelated to that detention, the police may lawfully arrest that suspect despite the initially improper detention. *People v Lambert*, 174 Mich App 610, 618; 436 NW2d 699 (1989). Accordingly, the police in this case lawfully arrested defendant upon learning of the outstanding warrants, regardless of the legality of their detention of him up to that moment. Because the

¹ *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968).

arrest was lawful, defendant had no right to resist it. Accordingly, defendant's resistance was actionable under MCL 750.81d. Moreover, this Court recently held that MCL 750.81d no longer requires, as an element of the crime, that the arrest being resisted be a lawful one. *People v Ventura*, 262 Mich App 370, 377; 686 NW2d 748 (2004), lv den ___ Mich ___; 689 NW2d 231 (2004)

Defendant asserts that the illegality of his detention beyond the initial *Terry* stop should insulate him from criminal liability for all events that followed, on the ground that they were thus the fruit of the poisonous tree. However, the fruit-of-the-poisonous-tree doctrine involves suppression of illegally seized evidence. See *People v Goldston*, 470 Mich 523, 528-529; 682 NW2d 479 (2004). In this case, no evidence was seized. Defendant cites no authority for the proposition that a suspect stands forever immune to prosecution for any crime committed while illegally detained.

We reverse and remand this case to the district court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ Janet T. Neff
/s/ Jessica R. Cooper