

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

NATHAN LAMARR FISHER,

Defendant-Appellee.

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UNPUBLISHED

April 25, 2006

No. 260397

Wayne Circuit Court

LC No. 04-010190

Before: Murphy, P.J., and O’Connell and Murray, JJ.

PER CURIAM.

In this prosecutor’s appeal, plaintiff appeals as of right from the circuit court’s order suppressing evidence and dismissing the case against defendant. We reverse and remand for further proceedings. This appeal is being decided without oral argument in accordance with MCR 7.214(E).

Defendant was bound over for trial for possession with intent to deliver less than 50 grams of morphine, MCL 333.7401(2)(a)(iv). The arresting police officer reported that he was in his marked police car, in an area where sales of Vicodin were popular, when he stopped to observe defendant and an unnamed female. The officer noticed a hand-to-hand exchange between those persons, and so approached on foot to investigate further. The officer saw some pills in plain view inside the car, the driver of which said had come from defendant. The officer then searched defendant for weapons or contraband, finding a bottle of morphine pills along with a crack pipe. The officer explained that he did not tell defendant he was under arrest at that time, but intended to detain him pending further investigation.

At the hearing on the motion to suppress the evidence obtained from defendant, the circuit court credited the arresting officer’s testimony, observed that defendant was not under arrest when he was searched, and ruled that the search impermissibly exceeded the scope permissible for patdown searches of persons subject to brief investigatory detentions. Having concluded that the evidence seized must be suppressed, and agreeing that the whole case against defendant was thus destroyed, the court dismissed the charge.

Evidence obtained in the course of a violation of a suspect’s rights under the Fourth Amendment of the United States Constitution is subject to suppression at trial. *People v Cartwright*, 454 Mich 550, 557-558; 563 NW2d 208 (1997). In reviewing a trial court’s decision following a suppression hearing, we review the trial court’s factual findings for clear error, but

review the legal conclusions de novo. See *People v Abraham*, 234 Mich App 640, 644; 599 NW2d 736 (1999).

In this case, the circuit court correctly held that, because there was no evidence that defendant was armed or dangerous at the time, the arresting officer's brief investigative detention of defendant did not itself justify the search that took place. See *Terry v Ohio*, 392 US 1, 30; 88 S Ct 1868; 20 L Ed 2d 889 (1968); *People v Champion*, 452 Mich 92, 99; 549 NW2d 849 (1996).

But the trial court failed to recognize that where probable cause to arrest exists, the police may conduct a search of the sort properly incidental to arrest whether or not the suspect is in fact arrested. "There is *no* case in which a defendant may validly say, 'Although the officer had a right to arrest me at the moment when he seized me and searched my person, the search is invalid because he did not in fact arrest me until afterwards.'" *People v Arterberry*, 431 Mich 381, 384-385; 429 NW2d 574 (1988), retaining emphasis and quoting *Peters v New York*, 392 US 40, 77; 88 S Ct 1889; 20 L Ed 2d 917 (1968).

A police officer has probable cause to arrest a suspect if the officer reasonably believes that a felony has been committed and that the suspect committed it. MCL 764.15; *People v Thomas*, 191 Mich App 576, 579; 478 NW2d 712 (1991). A police officer placing a suspect under arrest may search that person for weapons or evidence. *Chimel v California*, 395 US 752, 762-763; 89 S Ct 2034; 23 L Ed 2d 685 (1969); *People v Houstina*, 216 Mich App 70, 75; 549 NW2d 11 (1996). In this case, having observed what appeared to be an exchange between persons respectively inside and outside a car, in an area known for drug trafficking, and then observing pills inside the car which the occupant confirmed had come from defendant, the police officer had probable cause to believe that defendant had just participated in an illegal drug deal, and thus had probable cause to arrest him. Although the officer had not yet placed defendant under arrest, because he was legally entitled to do so, he had the authority to search defendant's person for weapons or contraband. Accordingly, the contraband discovered in this instance was admissible.

For these reasons, we hereby reinstate the charge against defendant, and remand this case to the circuit court for further proceedings.

Reversed and remanded. We do not retain jurisdiction.

/s/ William B. Murphy  
/s/ Peter D. O'Connell  
/s/ Christopher M. Murray