

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JOHN KENNETH WALMA,

Defendant-Appellee.

UNPUBLISHED

August 17, 2004

No. 249280

Kent Circuit Court

LC No. 02-001981-FH

Before: Whitbeck, C.J., and Owens and Schuette, JJ.

PER CURIAM.

I. Overview

Defendant John Kenneth Walma was charged with one count of resisting or obstructing a police officer during the officer's discharge of his or her duty in violation of MCL 750.479. The trial court dismissed the charge with prejudice after concluding that the officers, who worked for the Grand Rapids Police Department, were not acting with lawful authority when they executed Walma's arrest warrant outside the city of Grand Rapids. The prosecutor appeals as of right. We hold that the officers were lawfully authorized to execute the arrest warrant anywhere in the state, and therefore we reverse the order dismissing the charge.

II. Basic Facts And Procedural History

Grand Rapids police officers Charles Anderson, Russ Headsworth, and Brent Robinson were assigned to execute an arrest warrant for Walma at his home in Byron Center. On arrival, Headsworth and Robinson waited in a police car around the corner from Walma's home while Anderson approached Walma's house in an unmarked police car. Anderson knocked on the door and, when Walma's wife answered, he told her that he was interested in looking at Walma's house, which was for sale. Walma's wife told Anderson that Walma could show him the house, and that Walma was at another nearby home.

Anderson did not find Walma at the other house but, as he was driving back to Walma's house, he saw Walma enter the garage of his own home and close the door. Anderson knocked on the front door of Walma's house again and, after several minutes, Walma opened the garage door and asked what Anderson wanted. Anderson told Walma that he was interested in Walma's house and was wondering if someone could show him around, at which time Walma invited him inside. Once inside, Anderson informed Walma that he was a police officer and that he had a warrant for Walma's arrest.

According to Anderson, Walma started screaming at him and told him to get out of the house because he did not have a right to be there. Anderson stated that Walma then “pushed me in the chest with both of his palms and then started swinging at me, trying to push me toward the door that we had come in.” Anderson testified that a struggle then ensued that lasted for several minutes, and which was carried on inside of the house, in the garage, and in the backyard. At one point during the struggle, Walma took Anderson’s baton away from him and raised the baton over his head as if he were going to strike Anderson with it. When Anderson informed Walma that he would shoot him if he came any closer, Walma dropped the baton and began to struggle with Anderson again. At some point during the struggle, Anderson was able to radio Robinson and Headworth for assistance. Anderson testified that it required the efforts of all three officers to place handcuffs on Walma. Anderson sustained a minor scratch to his left thumb as a result of the struggle.

On the date that Walma’s trial was to begin, Walma moved for a dismissal on the ground that, because Anderson was a Grand Rapids officer attempting to execute an arrest warrant in Byron Center, Walma could not be convicted of resisting or obstructing a police officer under MCL 750.749 because Anderson and the other officers were not engaged in lawful acts when the struggle occurred. Specifically, Walma argued that only two statutes could potentially give the officers the lawful authority to execute an arrest warrant outside of their own jurisdiction, and neither was applicable.

Walma contended that the first of these statutes, MCL 764.2a, authorizes police officers to act outside of their respective city or jurisdiction only when they are enforcing the laws of the state of Michigan and working in conjunction with the Michigan State Police or a police officer from the jurisdiction that they are attempting to act within. Accordingly, Walma asserted that MCL 764.2a was inapplicable because the warrant for his arrest was issued for a violation of a local ordinance, not a state law, and the officers were not working in conjunction with the Michigan State Police or a local Byron Center law enforcement agency.

Walma argued that the only other statute that could apply is MCL 117.34, which Walma contended only authorizes officers to act outside of their jurisdiction when they are in “hot pursuit” of someone who has committed a crime or is reasonably believed to have committed a crime within the officer’s jurisdiction. Walma argued that MCL 117.34 was inapplicable to his case because the officers were not in “hot pursuit” of him, but were only attempting to execute an arrest warrant. Walma argued that because neither MCL 764.2a nor MCL 117.34 applied, the charges against him must be dismissed because the prosecution could not establish that the officers were engaged in lawful acts when they attempted to execute the arrest warrant.

In rebuttal, the prosecution argued that MCL 117.34, which it stated permits an officer of a city to pursue, arrest, and detain a person outside of the officer’s city when the person has committed or is suspected of having committed a crime within the officer’s city, provided the officers with lawful authority to execute the arrest warrant in Byron Center. According to the prosecution, MCL 117.34 should be interpreted “as broadly as possible” so as not to require that a police officer be in “hot pursuit.” Moreover, the prosecution argued that Walma did not have standing to object to the basis of the police officer’s lack of authority because MCL 117.34 was not designed to provide a defendant with substantive rights.

Noting that Walma's motion had not been timely made, the trial court determined that it would nonetheless consider the motion because, if it did not, Walma would be allowed to make a motion for a directed verdict on the same ground at the end of trial. Therefore, the trial court determined that it would be more suitable to entertain the motion before jeopardy had attached so that the prosecution would have the opportunity to have the trial court's ruling reviewed by this Court and, if this Court reversed, still try Walma.

As to the substance of Walma's motion, the trial court began by noting that MCL 750.479 can be broken into four different subsections. The first subsection makes it a criminal offense for a person to knowingly and willfully obstruct, resist, or oppose a "duly authorized" police officer during the officer's attempt to execute process, which includes executing an arrest warrant. The second subsection addresses the execution of orders by common councils, boards of trustees, and other organizations, and does not apply to the present case. The third subsection makes it a crime to beat or wound any "duly authorized" police officer when the officer is attempting to execute process. According to the trial court, in order for there to have been a violation of either the first or third subparts, the officer must have been "duly authorized" to perform his actions at the time of the incident. The final subsection makes it a crime for a person to "obstruct, resist, assault, beat or wound any police officer when that officer is engaged in the lawful performance of his or her duty, in particular, efforts to keep the peace." According to the trial court, the crucial issue under the final subsection is whether the officer was acting lawfully.

The trial court found that the testimony Anderson presented at the preliminary examination was inadequate to show that the officers were either "duly authorized" or "acting lawfully" at the time of the incident. The trial court stated that MCL 117.34 authorized an officer to "pursue, arrest and detain" a person outside of the city limits in the same manner as the county sheriff when the person has either committed a crime or misdemeanor within the city, is suspected of having done so, or has escaped from a city prison. According to the trial court, MCL 117.34 "has always been applied to authorize a police officer in one jurisdiction to continue the chase, so to speak, when a person who's committed a crime within his or her jurisdiction crosses the jurisdictional line," which did not happen in the present case. The trial court stated that it believed that the plain language of MCL 117.34 supports the commonly applied principle that it is only applicable in instances of hot pursuit, and further stated that if MCL 117.34 were interpreted so as not to require that an officer be in hot pursuit, then MCL 764.2a, which allows officers to exercise authority and powers outside of their own jurisdiction when enforcing a state law and working in conjunction with either the Michigan State Police or an officer of the jurisdiction, would be rendered meaningless.

The trial court also held that MCL 764.2a does not apply in the present instance because the officers were not working "in conjunction with" the Michigan State Police or the Kent County Sheriff's Department, which would be the only local law enforcement office with jurisdiction in Byron Center because Byron Center does not have its own police force. The trial court stated that it had not been able to locate any other applicable statutes and the parties had not brought any others to its attention. Therefore, the trial court concluded that Anderson was not duly authorized to execute the arrest warrant in Byron Center and would not have been acting lawfully in attempting to exercise his authority to keep the peace.

The trial court also rejected the prosecution's argument that, because MCL 117.34 and MCL 764.2a are meant to protect political jurisdictions rather than the rights of individuals,

Walma did not have standing to challenge the charges. The trial court reasoned that MCL 750.479 provides Walma with individual protection by requiring that the officer that he resisted or obstructed was acting with due authority. The trial court held that the prosecution had not proven all of the necessary elements of MCL 750.479 and issued an order to quash the information, thereby dismissing the charge with prejudice.

III. Violation Of MCL 750.479

A. Standard Of Review

We generally review a circuit court's decision to quash an information for an abuse of discretion. However, the issue presented here is whether Walma's alleged conduct falls within the statutory scope of a criminal law. This is a question of law that we review de novo.¹

B. Legal Authorization To Execute The Arrest Warrant

In the present case, Walma was charged with resisting or obstructing a police officer during the discharge of the officer's duty in violation of MCL 750.479. The trial court correctly determined that, for a defendant to be charged under MCL 750.479, the officers must have been legally authorized to execute the arrest warrant.² However, the trial court only considered two sources of authority that would legally authorize the officers to execute the arrest warrant, namely, MCL 117.34³ and MCL 764.2a.⁴ In so doing, the trial court overlooked MCL 767.31, which provides that "[e]very warrant shall be directed to the sheriff, constable, police officer or peace officer of the county in which the indictment shall be found, and may be executed in any part of this state."⁵

¹ *People v Hotrum*, 244 Mich App 189, 191; 624 NW2d 469 (2000).

² *People v MacLeod*, 254 Mich App 222, 226-227; 656 NW2d 844 (2002).

³ MCL 117.34 provides:

When any person has committed or is suspected of having committed any crime or misdemeanor within a city, or has escaped from any city prison, the police officers of the city shall have the same right to pursue, arrest and detain such person without the city limits as the sheriff of the county.

⁴ At the time Walma committed the alleged misconduct, MCL 764.2a⁴ provided:

A peace officer of a county, city, village, or township of this state may exercise authority and powers outside his own county, city, village, or township, when he is enforcing the laws of this state in conjunction with the Michigan state police, or in conjunction with a peace officer of the county, city, village, or township in which he may be, the same as if he were in his own county, city, village, or township.

MCL 764.2a was amended by 2002 PA 483 on June 27, 2002.

⁵ We also note that our Supreme Court has implicitly recognized that a police officer may act outside of his own jurisdiction in several circumstances, including when the officer is executing
(continued...)

In *People v Rowe*, this Court held that this provision not only authorized an officer to execute a warrant anywhere in the county in which the warrant was issued, but also in any part of the state.⁶ In that case, a warrant for the defendant's arrest was issued by the district court in Ottawa County based on a charge of receiving and concealing stolen property.⁷ Two police officers from the city of Holland attempted to execute the warrant at defendant's residence in Holland Township, outside of the city of Holland, where the defendant resisted the arrest. After being convicted of resisting arrest in violation of MCL 750.479, the defendant asserted on appeal that the officers did not have the authority to execute the arrest warrant outside of the city of Holland.⁸

This court, however, held that arrest warrants may be executed in any part of the state under MCL 767.31, which is made applicable to all criminal proceedings by MCL 767.2.⁹ In reaching this conclusion, the Court reasoned that a magistrate acts as a judicial officer for Michigan's one court of justice, Const 1963, art 6, § 1,¹⁰ when he or she issues an arrest warrant.¹¹ This Court observed that a magistrate is authorized to direct warrants to all officers within a county, stating that a "magistrate's authority to issue warrants is equivalent to the authority of a circuit judge and extends county-wide."¹² This Court then determined that a

(...continued)

an arrest or search warrant. See *Hamilton, supra* at 530-531 (noting that an officer was "outside his jurisdiction, *without a warrant*, not in hot pursuit, and not in conjunction with law enforcement officers having jurisdiction" in evaluating whether an officer's extrajurisdictional arrest was legal) (emphasis added).

⁶ See *Rowe, supra* at 211.

⁷ *Id.* at 204.

⁸ *Id.* at 205-206.

⁹ *Id.* at 206; MCL 767.31.

¹⁰ Const 1963, art 6, § 1 provides:

The judicial power of the state is vested exclusively in one court of justice which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction that the legislature may establish by a two-thirds vote of the members elected to and serving in each house.

¹¹ *Rowe, supra* at 206-207, citing *People v DeMeaux*, 194 Mich 18, 23; 160 NW 634 (1916).

¹² *Rowe, supra*, citing MCL 600.8317 and MCL 764.1. MCL 600.8317 was amended by 1974 PA 52, effective March 26, 1984, and 1974 PA 278, effective December 19, 1984, and currently provides, "The district court has the same power to issue warrants . . . as the circuit court now has or may hereafter have." MCL 764.1 was amended by 1980 PA 506 and 1990 PA 41, and currently provides that a magistrate may issue a warrant for the apprehension of persons charged with a felony, misdemeanor, or ordinance violation if: (1) written authorization, signed by the prosecuting attorney, is filed with the magistrate or, (2) security for costs is filed with the magistrate or, (3) in the case of minor offenses, which include misdemeanors and ordinance violations for which the maximum permissible penalty does not exceed ninety-two days' imprisonment or a fine of more than \$1,000, MCL 761.1(k), the warrant is requested by certain specified officials.

magistrate could appropriately issue such an arrest warrant to any officer under MCL 767.31 and former MCL 766.3, which stated, “the magistrate shall issue a warrant directed to the sheriff, chief of police, constable or any peace officer of the county.”¹³

This Court concluded that any peace officer to whom a warrant is directed is authorized to execute the warrant outside of the county “[i]n accordance with the legislative scheme that there are no territorial limits in the state on arrest warrants.”¹⁴ In so holding, this Court relied on MCL 767.31, which states that “Every warrant . . . may be executed in any part of this state,” and MCL 764.2, which provides:

If any person against whom a warrant shall be issued for an alleged offense committed within any county, shall, either before or after the issuing of such warrant, escape from or be out of the county, *the sheriff or other officer to whom such warrant may be directed, may pursue and apprehend the party charged, in any county of this state*, and for that purpose may command aid and may exercise the same authority as in his own county.^[15]

Based on these statutes, this Court concluded that “when a warrant is directed to a law enforcement officer, the warrant itself provides the authority needed to execute it.”¹⁶

Accordingly, we hold that the trial court erred in determining that the officers did not have the lawful authority to execute the arrest warrant outside of the city of Grand Rapids.

Reversed.

/s/ William C. Whitbeck
/s/ Donald S. Owens
/s/ Bill Schuette

¹³ *Rowe, supra* at 207. Although MCL 767.31 remains unchanged since this Court’s decision in *Rowe*, MCL 766.3 has since been repealed by 1980 PA 506. However, 1980 PA 506 also added MCL 764.1b, which applies to warrants issued by magistrates under MCL 764.1, and provides that the warrant shall be directed to *a peace officer*; shall command the peace officer immediately to arrest the person accused and take that person, without unnecessary delay, before a magistrate of the judicial district in which the offense is charged to have been committed, to be dealt with according to law” (emphasis added).

Because the Grand Rapids officers in the present case are “peace officers,” they had the authority under this statutory provision to execute the arrest warrant anywhere in Kent County.

¹⁴ *Id.* at 208.

¹⁵ *Id.* at 204 (emphasis in *Rowe*).

¹⁶ *Id.* at 208-209.