

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

KENNETH EDWARD QUINTON,

Defendant-Appellee.

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UNPUBLISHED

August 7, 2001

No. 230630

Oakland Circuit Court

LC No. 99-007321-AR

Before: Doctoroff, P.J., and Murphy and Zahra, JJ.

PER CURIAM.

Defendant was charged with possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv). At defendant's preliminary examination, the district court dismissed the charge. The prosecution appealed the district court's ruling to the circuit court, which affirmed the dismissal of the charge. This Court denied the prosecution's application for leave to appeal the circuit court's order. *People v Quinton*, unpublished order of the Court of Appeals, entered August 1, 2000 (Docket No. 228194). The prosecution then filed an application for leave to appeal with the Michigan Supreme Court, which, in lieu of granting leave to appeal, remanded the case to this Court for consideration as on leave granted. *People v Quinton*, 463 Mich 899; 618 NW2d 913 (2000). We reverse and remand for reinstatement of the charge against defendant.

At defendant's preliminary examination, Michigan State Police Detective Thomas Cremonte testified to the following. On November 2, 1997, a woman identified as Cavill called the Michigan State Police from her cell phone while driving south on M-23 near I-96. She informed the police that she was defendant's live-in girlfriend, and that she and defendant had a domestic dispute earlier that day. Defendant had threatened Cavill. At the time of the call, Cavill was afraid. She informed the police that defendant was following her in a green, 1983 Ford pickup truck. Cavill also told the police that she had observed defendant place several packets of cocaine inside a green folder, which he was carrying with him inside his truck.

Detective Cremonte was directed to attempt to locate defendant's vehicle. Cremonte traveled to the general area from which Cavill was calling. He spotted a vehicle matching the description given by Cavill. The green, 1983 Ford pickup truck that Cremonte observed was traveling behind a car driven by a woman. Cremonte stopped the truck. Cavill was directed to continue driving to the police station and to make a written statement. The driver of the truck

identified himself as defendant, and Cremonte ordered him to exit the truck and stand at the rear of the vehicle.

At that point in the testimony, the district court refused to allow the prosecutor to question Detective Cremonte regarding the search of defendant or his truck. The court determined that Cavill's reliability was not established by her phone call or an independent investigation by the police and, therefore, evidence found in defendant's possession was excluded. Defendant moved for dismissal of the charge, which the district court granted. The circuit court affirmed the district court's ruling.

On this appeal, the prosecution argues that the trial court erred in dismissing the charge against defendant because the stop of defendant's vehicle did not violate defendant's Fourth Amendment rights. This Court reviews a trial court's decision on a motion to dismiss for an abuse of discretion. *People v Adams*, 232 Mich App 128, 132; 591 NW2d 44 (1999).

The prosecution claims that the stop of defendant was justified because there was reasonable cause to suggest that defendant had violated the domestic violence statute. We agree.<sup>1</sup> At the time of defendant's arrest, MCL 764.15a provided:

A peace officer may arrest an individual for violating section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, or a local ordinance substantially corresponding to section 81 of that act regardless of whether the peace officer has a warrant or whether the violation was committed in his or her presence if the peace officer has or receives positive information that another peace officer has reasonable cause to believe both of the following:

(a) The violation occurred or is occurring.

(b) The individual has had a child in common with the victim, resides or has resided in the same household as the victim, or is a spouse or former spouse of the victim.

MCL 750.81a provided:

(1) A person who assaults an individual without a weapon and inflicts serious or aggravated injury upon that individual without intending to commit murder or to inflict great bodily harm less than murder is guilty of a misdemeanor punishable

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<sup>1</sup> The circuit court refused to consider the prosecution's argument regarding defendant's violation of the domestic violence statute as justification for the stop, ruling that argument was not preserved because it was not raised before the district court. We consider the argument regarding the domestic violence statute that the prosecution addresses on appeal because the issue is necessary to a proper determination of this case and involves a question of law concerning which the necessary facts have been presented. See *People v Lumsden*, 168 Mich App 286, 292-293; 423 NW2d 645 (1988) and *Providence Hospital v National Labor Union Health & Welfare Fund*, 162 Mich App 191, 194-195; 412 NW2d 690 (1987).

by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(2) Except as provided in subsection (3), an individual who assaults his or her spouse or former spouse, an individual with whom he or she has had a child in common, or a resident or former resident of his or her household, without a weapon and inflicts serious or aggravated injury upon that individual without intending to commit murder or to inflict great bodily harm less than murder is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or fine of not more than \$1,000.00, or both.

(3) An individual who assaults his or her spouse or former spouse, an individual with whom he or she has had a child in common, or a resident or former resident of his or her household, in violation of subsection (2), and who has 1 or more previous convictions for assaulting or assaulting and battering his or her spouse or former spouse, an individual with whom he or she has had a child in common, or a resident or former resident of his or her household, in violation of this section or section 81, 82, 83, 84, or 86 or a local ordinance substantially corresponding to section 81, is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,500.00, or both.

Here, Cavill informed the police that she was defendant's live-in girlfriend. She further stated that she and defendant had been involved in a domestic dispute earlier in the day. Defendant had threatened Cavill. Cavill told the police that she was afraid of defendant. Under these circumstances, the police had reasonable cause that a violation of MCL 750.81a had occurred and that Cavill and defendant resided in the same household. Thus, Detective Cremonte was justified in stopping and arresting defendant. MCL 764.15a.

It is well settled that a police officer's search of a defendant incident to an arrest requires no additional justification. *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996), citing *United States v Robinson*, 414 US 218; 94 S Ct 467; 38 L Ed 2d 427 (1973) and *People v Chapman*, 425 Mich 245; 387 NW2d 835 (1986). In addition, when the arrest is of a person in a vehicle, the police may search the entire passenger compartment of the vehicle as well as any closed containers found in the search of that area. *People v Catanzarite*, 211 Mich App 573, 581; 536 NW2d 570 (1995), citing *New York v Belton*, 453 US 454, 458-460; 101 S Ct 2860; 69 L Ed 2d 768 (1981). Therefore, Detective Cremonte's search of defendant or defendant's vehicle incident to his arrest did not violate defendant's Fourth Amendment right to be free from unreasonable searches and seizures. US Const, Am IV and XIV; Const 1963, art 1, § 11.

The fact that Detective Cremonte specified that he stopped and searched defendant because the police had information that he possessed drugs does not change our conclusion. As stated by our Supreme Court in *People v Oliver*, \_\_ Mich \_\_; \_\_ NW2d \_\_ (Docket Nos. 112341; 115064, issued 6/12/01):

"[T]he fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively,

justify that action." [*Id.* at slip op p 18, quoting *People v Arterberry*, 431 Mich 381, 384; 429 NW2d 574 (1988), quoting *Scott v United States*, 436 US 128, 138, 98 S Ct 1717, 1723, 56 L Ed 2d 168 (1978).]

Accordingly, the district court abused its discretion in excluding the evidence found incident to the search of defendant or his vehicle and in dismissing the charge against defendant.

Reversed and remanded for reinstatement of the charge against defendant. We do not retain jurisdiction.

/s/ Martin M. Doctoroff

/s/ William B. Murphy

/s/ Brian K. Zahra