

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WESLEY F. ROBERTS,

Defendant-Appellant.

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UNPUBLISHED

June 4, 2002

No. 230521

Wayne Circuit Court

LC No. 00-003972

Before: Fitzgerald, P.J., and Holbrook, Jr., and Doctoroff, JJ.

MEMORANDUM.

Defendant appeals as of right his bench trial conviction for possession of less than 25 grams of cocaine. MCL 333.7403(2)(a)(v). We affirm.

Police officers were conducting surveillance on a car that had been driven by a suspect in an assault case. Defendant fit the description of the person being sought. When defendant drove away in the car, he was stopped and arrested. An inventory search revealed a controlled substance in an eyeglass case in the trunk of the car.

Defendant asserts that the police lacked probable cause to arrest him and the search was improper where he was not the person who was the target of the surveillance. Defendant failed to raise these issues at trial. A constitutional right may be forfeited by a party's failure to raise the issue. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). To avoid forfeiture under the plain error rule three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear and obvious, and 3) the plain error affected substantial rights. *Id.* Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Id.*

When police have probable cause to arrest one party and they reasonably mistake a second party for the first party, then the arrest of the second party is valid. *Hill v California*, 401 US 797, 802; 91 S Ct 1106; 28 L Ed 2d 484 (1971). Under these circumstances, police are entitled to make a search incident to the arrest. *Id.*, 804. Police may conduct an inventory search of a person in detention if the underlying arrest was valid, and the search was conducted in accordance with standardized department procedures. *People v Toohey*, 438 Mich 265, 279; 475 NW2d 16 (1991). No separate justification is needed for the impoundment where the officers acted in accordance with standard policy of the police department. *Id.*, 288.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Donald E. Holbrook, Jr.  
/s/ Martin M. Doctoroff