

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAMAR ROBINSON,

Defendant-Appellant.

UNPUBLISHED

June 18, 2002

No. 237738

Wayne Circuit Court

LC No. 99-005187

Before: Kelly, P.J., and Murphy and Murray, JJ.

PER CURIAM.

Defendant pleaded guilty to carrying a concealed weapon, MCL 750.227, and possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v). His guilty plea was conditioned upon being allowed to raise on appeal issues related to the trial court's denial of his motion to suppress. Defendant was sentenced to one year in jail, followed by four years' probation, for the carrying a concealed weapon conviction, and one year in jail, followed by five years' probation, for the possession of cocaine conviction. He appeals as on leave granted. We affirm.

As defendant was driving home after picking up his car from the mechanic, he was stopped by police and pulled over. The officers testified that defendant was pulled over for speeding and for having an obscured license plate. However, the trial court found, after an evidentiary hearing, that the officers' testimony was questionable and that the stop was not proper. Upon being pulled over, defendant could not produce a driver's license for police. An officer ordered defendant out of his car and patted him down for weapons. The police checked defendant's name, either by running his name in their computer or by calling the station, and discovered that there was an outstanding warrant for defendant's arrest. Defendant was arrested and the police subsequently searched his car, where they discovered a handgun, cocaine, and heroin.¹

Defendant moved to suppress the evidence based on an illegal stop. As noted above, the trial court found that the stop was illegal, but, relying on *People v Lambert*, 174 Mich App 610;

¹ Defendant testified that the police searched his car *before* discovering the outstanding bench warrant, but the trial court found that the search was conducted after the police discovered the outstanding warrant.

436 NW2d 699 (1989), denied defendant's motion based on the attenuation exception to the exclusionary rule. The trial court also denied defendant's motion for relief from the order. This Court denied defendant's application for leave to appeal, *People v Robinson*, unpublished order of the Court of Appeals, entered March 8, 2001 (Docket No. 228184), but the Supreme Court remanded the case to this Court for consideration as on leave granted. *People v Robinson*, 465 Mich 901 (2001).

Defendant argues that the trial court erred in granting his motion to suppress because the initial traffic stop was illegal. The prosecution does not challenge the trial court's finding that the initial stop was improper. In reviewing a trial court's decision in regard to a motion to suppress, this Court reviews the trial court's factual findings to determine if they are clearly erroneous, but reviews conclusions of law de novo. *People v Snider*, 239 Mich App 393, 406; 608 NW2d 502 (2000).

In *People v Stevens (After Remand)*, 460 Mich 626, 634, 636; 597 NW2d 53 (1999), our Supreme Court stated:

The introduction into evidence of materials seized and observations made during an unlawful search is prohibited by the exclusionary rule. *Weeks v United States*, 232 US 383; 34 S Ct 341; 58 L Ed 652 (1914), overruled on other grounds in *Elkins v United States*, 364 US 206; 80 S Ct 1437; 4 L Ed 2d 1669 (1960); *Silverman v United States*, 365 US 505; 81 S Ct 679; 5 L Ed 2d 734 (1961). Additionally, the exclusionary rule prohibits the introduction into evidence of materials and testimony that are the products or indirect results of an illegal search, the so-called "fruit of the poisonous tree" doctrine. *Wong Sun v United States*, 371 US 471; 83 S Ct 407; 9 L Ed 2d 441 (1963).

* * *

"The exclusionary rule forbids the use of direct and indirect evidence acquired from governmental misconduct, such as evidence from an illegal police search.

Three exceptions to the exclusionary rule have emerged: the independent source exception, the attenuation exception, and the inevitable discovery exception." *People v LoCicero (After Remand)*, 453 Mich 496, 508-509; 556 NW2d 498 (1996) (citations omitted).

The issue in the instant case is whether the attenuation exception to the exclusionary rule applies to the evidence found in defendant's car. We find that the trial court properly applied the attenuation exception and properly denied defendant's motion to suppress. The *Lambert* panel stated:

When a defendant claims that physical evidence should be suppressed as a result of an unlawful seizure of his person, the appropriate inquiry is whether that evidence was procured by an exploitation of the illegality or, instead, by means sufficiently distinguishable to be purged of the primary taint. See *People v Jones*, 66 Mich App 223, 230-231; 238 NW2d 813 (1975), modified on other grounds 397 Mich 871 (1976), citing *Wong Sun v United States*, 371 US 471, 488; 83 S Ct

407; 9 L Ed 2d 441 (1963). This is not a “but for” test, but rather depends on whether there has been an exploitation of the primary illegality. *Jones, supra*, p 231. As explained in *People v Roderick Walker*, 27 Mich App 609, 617; 183 NW2d 871 (1970):

“Various approaches have been taken by the courts in deciding whether in particular cases the people have taken advantage of or exploited the primary illegality. One test, suggested by some commentators and applied by some courts, and which makes sense to us, is whether it was reasonably foreseeable by the police when they acted that by engaging in the illegal behavior they might obtain evidence of the kind they obtained.” [*Lambert, supra* at 616-617.]

In *Lambert*, this Court, finding that the evidence found in the defendant’s car after he was illegally stopped was admissible, stated:

Here, the unlawful stop produced defendant and his vehicle. However, the physical evidence obtained resulted from the fact that one of the deputies immediately recognized defendant as being the subject of outstanding bench warrants. Defendant’s lawful arrest and all the evidence obtained resulted from that identification. Under the circumstances of this case, it was not reasonably foreseeable for the deputies to believe that they would be able to recognize the driver of the vehicle as being the subject of outstanding bench warrants at the time they made the stop. There was no exploitation of the primary illegality and, hence, the “fruit of the poisonous tree” doctrine was inapplicable. We conclude from the authorities cited above that *where the police have unlawfully stopped or detained a citizen and then discover that the person detained is the proper subject of a lawful arrest on grounds other than the original illegal stop, the police may make the arrest and any evidence obtained as a result of the lawful arrest is admissible*. For this reason, we uphold the trial court’s ruling that the evidence was admissible. [*Id.* at 617-618 (emphasis added).]

Defendant argues that this Court’s holding in *Lambert* has been limited by the Supreme Court’s decision in *People v LoCicero (After Remand)*, 453 Mich 496, 508-509; 556 NW2d 498 (1996). We disagree. The facts in *LoCicero* are distinguishable from the facts in *Lambert*. In *Lambert*, the arrest of the defendant and subsequent search of his car was not an exploitation of the initial illegal stop because the police could not reasonably have known that the defendant would have outstanding warrants for his arrest before they stopped his car and recognized him. *Lambert, supra* at 617-618. In *LoCicero*, however, the arrest of the defendants and the subsequent search of their car was the result of active police exploitation of the initial illegal stop because the police were specifically looking for drugs when they stopped the defendants. *LoCicero, supra* at 510.

The *LoCicero* Court rejected this Court’s opinion that the search was permissible because the police discovered an open container of intoxicants after stopping the defendants’ vehicle in an effort to find drugs; therefore, the police had grounds for a proper arrest and the evidence found pursuant to that lawful arrest was admissible. *Id.* at 508-510. At first glance, the *LoCicero* decision would appear to control here, but the distinguishing feature of *LoCicero* is that there, the police used evidence found pursuant to the illegal stop as a basis for the arrest and

the subsequent search which lead to the discovery of drugs. This was clearly exploitation of the illegality. In contrast, in the present case, the police did not use any physical evidence discovered on stopping defendant's vehicle to support the initial decision to arrest defendant and search the vehicle, instead the arrest arose out of simply finding defendant in light of the outstanding arrest warrant, which lead to the discovery of evidence, providing further support to arrest plaintiff. As in *Lambert*, this was not exploitation of the illegality. The *LoCicero* Court specifically distinguished *Lambert* on the basis that "[i]n *Lambert*, the police did not discover evidence – they discovered the defendant." *LoCicero, supra* at 509. Here, the police discovered defendant, which lead to the arrest and a lawful search. The Supreme Court did not overrule or limit *Lambert*.

Defendant argues that *Lambert* does not apply to this case because the facts are distinguishable. Again, we disagree. In this case, there was no showing that the police sought to exploit the primary illegality of their stop. The police testified that they stopped defendant because he was speeding and because his license plate was obscured. However, the trial court found that those reasons were questionable and that the stop was illegal. The illegal stop produced defendant and his vehicle. However, as noted above, the evidence found in defendant's car resulted from the fact that the police discovered that there was an outstanding warrant for defendant's arrest. Defendant's lawful arrest pursuant to that warrant and all the evidence found in his car resulted from this warrant when they stopped him. There is no evidence that the officers had any suspicions related to defendant having an outstanding bench warrant. Regardless of the officers' actual reason for stopping defendant in this case, it was not reasonably foreseeable for them to believe that they would stop a person with an outstanding bench warrant. See *Lambert, supra* at 617. It was only after defendant had been stopped that the police discovered that he had an outstanding bench warrant.

We find that, as in *Lambert*, the officers' arrest of defendant and subsequent search of defendant's car was not an exploitation of the illegal stop, but was accomplished by means of the arrest warrant discovered after the illegal stop. The warrant had no relation to their reason for stopping him. Therefore, the police made a lawful arrest and any evidence found as a result of this arrest is admissible.

Defendant also argues that, even if the evidence is admissible under the United States Constitution, the evidence should be suppressed under the Michigan Constitution. Defendant argues that, in *Sitz v Dep't of State Police*, 443 Mich 744; 506 NW2d 209 (1993), the Michigan Supreme Court stated that the Michigan Constitution provided greater protection than the United States Constitution from warrantless seizures and searches. However, *Sitz* was a case dealing with sobriety checkpoint stops. In *Michigan Dep't of State Police v Sitz*, 496 US 444; 110 S Ct 2481; 110 L Ed 2d 412 (1990), the United States Supreme Court had held that a sobriety checkpoint did not violate the Fourth Amendment of the United States Constitution. In *Sitz, supra*, at 759, the Michigan Supreme Court distinguished the Michigan Constitution from the United States Constitution. The Michigan Supreme Court stated, "the history of our jurisprudence conclusively demonstrates that, in the context of automobile seizures, we have extended more expansive protection to our citizens than that extended [by the United States Constitution]. *Id.* at 776. The Michigan Supreme Court then held that sobriety checkpoints violated the Michigan Constitution. *Id.* at 747, 778-779. *Sitz* applies to random checkpoint stops and not to the instant case. Additionally, the Michigan cases applicable to the instant case, such

as *Lambert* and *LoCicero*, give analyses under the correct constitutional standard. The trial court did not err in applying *Lambert* and by finding that the evidence found as a result of the search of defendant's car after the outstanding warrant was discovered was admissible.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ William B. Murphy

/s/ Christopher M. Murray