

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DWAYNE MATTHEWS,

Defendant-Appellee.

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UNPUBLISHED

February 19, 1999

No. 205129

Recorder's Court

LC No. 96-009366

Before: Gribbs, P.J., and Saad and P.H. Chamberlain\*, JJ.

MEMORANDUM.

Plaintiff appeals by right an order of dismissal entered by the trial court at the conclusion of a bench trial on charges of carrying a concealed weapon, MCL 750.227; MSA 48.424, possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii); MSA 14.15(7401)(2)(d)(iii), and felony-firearm, MCL 750.227b; MSA 28.424(2). We reverse and remand for entry of a judgment of conviction and sentence. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court dismissed the case on the ground that defendant's traffic stop and arrest were illegal because defendant was stopped by plainclothes police officers in an unmarked police vehicle. In this regard, the trial court relied upon language in the statutes prohibiting fleeing and eluding under both the Vehicle Code, MCL 257.602a; MSA 9.2302(1), and the Penal Code, MCL 750.479a; MSA 28.747(1), which provides that the prohibition "does not apply unless the police or conservation officer giving the signal is in uniform, and the vehicle driven by the police or conservation officer is identified as an official police or department of natural resources vehicle." The trial court reasoned that this statutory language is intended to make it illegal for persons to be stopped by non-uniformed police officers in unmarked vehicles.

We find the trial court's reasoning to be erroneous. We begin by noting that even if defendant's arrest were illegal, this would not provide a basis for dismissal, but at most, only a possible

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\* Circuit judge, sitting on the Court of Appeals by assignment.

basis for suppression of evidence obtained as a result of the arrest. *People v Burrill*, 391 Mich 124, 133; 214 NW2d 823 (1974); *People v Dalton*, 155 Mich App 591, 597; 400 NW2d 689 (1986). But see *People v Lyon*, 227 Mich App 599, 610-611; 577 NW2d 124 (1998) (exclusionary rule applies only if the seizure is constitutionally invalid – not merely statutorily illegal). Moreover, defendant never moved to suppress and the prosecution’s evidence in this case was received at trial without objection.

Furthermore, defendant’s arrest was not illegal. The statutory language cited by the trial court merely creates an exception to the fleeing and eluding statutes. The statutes governing the authority and manner for making arrests contain no similar qualification. See, e.g., MCL 764.15; MSA 28.874 and MCL 764.19; MSA 28.878. Where, as here, sufficient cause exists for the stop or arrest, the mere fact that the arresting police officers were not in uniform and/or were in an unmarked police vehicle does not affect the validity of the stop or arrest. See e.g., *People v Holloway*, 416 Mich 288; 330 NW2d 405 (1982); *People v Walker*, 401 Mich 572; 259 NW2d 1 (1977); *People v Mathews*, 109 Mich App 129, 133; 311 NW2d 314 (1981).

Plaintiff correctly notes that reversal of the trial court’s dismissal ruling does not affect defendant’s double jeopardy rights because the trial court did not acquit defendant based upon a determination that the admissible evidence is insufficient to prove defendant’s guilt beyond a reasonable doubt. To the contrary, the trial court effectively made a finding of guilt by repeatedly stating that the proofs had demonstrated, “beyond a reasonable doubt,” that defendant did all of the things he was accused of doing in the information. The trial court’s dismissal was based upon a separate legal ruling regarding the legality of defendant’s arrest.

We find the situation presented in this case analogous to the situation presented when the judge in a bench trial grants a defense motion to suppress at the conclusion of trial after making a general finding of guilt. In such situations, as here, double jeopardy is not a problem because further trial proceedings in the trial court are not required, but only reinstatement of the finding of guilt. E.g., *United States v Ceccolini*, 435 US 268; 98 S Ct 1054; 55 L Ed 2d 268 (1978); *United States v Kopp*, 429 US 121; 97 S Ct 400; 50 L Ed 2d 336 (1976); *United States v Morrison*, 429 US 1; 97 S Ct 24; 50 L Ed 2d 1 (1976); *United States v Rose*, 429 US 5; 97 S Ct 26; 50 L Ed 2d 5 (1976). See also *People v Torres*, 452 Mich 43, 64-66; 549 NW2d 540 (1996).

The dismissal order entered by the trial court is reversed and this case is remanded to the trial court for entry of a judgment of conviction and sentence. We do not retain jurisdiction.

/s/ Roman S. Gibbs  
/s/ Henry William Saad  
/s/ Paul H. Chamberlain