

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

UNPUBLISHED
November 21, 2013

v

JEFFREY LEE REED,

No. 311067
Wayne Circuit Court
LC No. 12-002277-FH

Defendant-Appellee.

Before: SAWYER, P.J., and O'CONNELL and K. F. KELLY, JJ.

PER CURIAM.

The prosecution appeals as of right the trial court's order dismissing defendant Jeffrey Reed's criminal charge of assaulting, resisting, or obstructing a police officer. MCL 750.81d(1). We reverse and remand for reinstatement of the charge and further proceedings on the merits.

On December 25, 2011, defendant was arrested by police officer Dean Muczynski for assaulting, resisting, or obstructing a police officer. On the day of defendant's trial, the trial court granted defendant's motion to hold an evidentiary hearing to determine if Muczynski's conduct was lawful on the date of defendant's arrest. Over the objection of the prosecution, the trial court held the evidentiary hearing. Muczynski and police officers Allen Ibrahimovic and Samuel Galloway testified that they were investigating an armed robbery on the evening of December 25, 2011, when they observed defendant near a brown van that was parked in the parking lot of a gas station. Because defendant matched the description of one of the robbers and the van matched the description of the one said to be used in the robbery, Muczynski followed defendant into the gas station with the intention of performing a *Terry*¹ stop. Muczynski testified that defendant "charged" him when he entered the gas station and that an altercation ensued as a result.

Defendant denied that he was the aggressor and testified that Muczynski grabbed him from behind. Defendant attempted to get free because he did not know who was restraining him. Defendant testified that he was thrown onto the ground, punched, and kicked by several officers. The trial court found that the officers' testimony conflicted, that defendant was a credible

¹ *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968).

witness, and that Muczynski illegally seized and arrested defendant.² Based on this finding, the trial court dismissed defendant's criminal charge.

On appeal, the prosecution argues that the trial court erred by usurping the fact-finding function of the jury and deciding an element of the charged offense. We agree. In *People v Moreno*, 491 Mich 38, 52; 814 NW2d 624 (2012), our Supreme Court held that, in order to convict a defendant of the offense of assaulting, resisting, or obstructing a police officer, the prosecution must prove that the conduct of the officers from which the defendant's resistance arose was lawful. Accordingly, by determining that Muczynski illegally seized and arrested defendant, the trial court decided an essential element of the charged offense.

This Court has previously held that, when lawfulness of an arrest is an element of the charged offense, it becomes a question of fact to be decided by the jury, *People v Dalton*, 155 Mich App 591, 598; 400 NW2d 689 (1986), and it is well established that it is an error requiring reversal for the trial court to undermine the essential fact-finding function of the jury, *People v Tice*, 220 Mich App 47, 54; 588 NW2d 245 (1996). By determining that Muczynski did not act lawfully, the trial court removed consideration of an essential element of the offense from the jury and usurped its fact-finding function. Therefore, the trial court abused its discretion by dismissing the criminal charge. *People v Stone*, 269 Mich App 240, 242; 712 NW2d 165 (2005). Accordingly, we reverse the trial court's order dismissing defendant's charge and remand this case to the trial court.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Peter D. O'Connell
/s/ Kirsten Frank Kelly

² Although the issue was whether Muczynski possessed reasonable suspicion to perform a *Terry* stop and temporarily detain defendant, the trial court instead found that defendant was illegally seized and arrested without considering the issue of reasonable suspicion.