STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 16, 2008
v	No. 278801 Kalamazoo Circuit Court
SIDNEY JAMES MITCHELL, Defendant-Appellant.	LC No. 05-001575-FH

Before: Meter, P.J., and Hoekstra and Servitto, JJ.

PER CURIAM.

A jury convicted defendant of one count of resisting and obstructing a police officer, MCL 750.81d(1).[1] Defendant appeals as of right. Because the trial court did not err in finding that there was reasonable suspicion to believe defendant was engaging in criminal activity and because the trial court did not err in instructing the jury that whether the underlying arrest was illegal was of no consequence to a charge of resisting and obstructing a police officer, we affirm.

Before trial, defendant's attorney filed a delayed motion arguing defendant had been illegally detained and, therefore, any resulting evidence or statements should be suppressed.

At an evidentiary hearing, Kalamazoo Public Safety Officer Anthony Morgan testified that on July 30, 2005, he worked a directed patrol at the Interfaith Homes apartment complex, where there had been an increase in violent crimes and in the number of trespassers. "No trespassing" signs were posted throughout the complex.

That night, at approximately 10:00 p.m., Morgan observed defendant and another man standing on a sidewalk in the apartment complex for about three minutes. Morgan approached defendant and asked defendant if he lived in the complex. Defendant said that he did not. Morgan then decided to detain defendant to investigate whether defendant was trespassing. Morgan attempted to ask defendant additional questions to aid his investigation, but defendant stated he did not need to answer the questions and walked away. Morgan followed defendant and repeatedly ordered him to stop, but defendant kept on walking. After walking approximately

[1] Defendant was acquitted of a second count of resisting and obstructing a police officer in connection with his actions at the Kalamazoo Public Safety headquarters.

150 feet, defendant stopped, turned around, looked at Morgan, and took a fighter stance. Morgan then requested backup, and when two other officers arrived, defendant was arrested for trespass.

Defendant testified that he went to the apartment complex to visit his brother. However, his brother was not there and he left. As he was walking through a "cut through" on his way to a gas station, he was approached by Morgan, who asked him if he was a resident of the complex. Defendant answered no and explained that he had just left his brother's apartment and he was leaving the complex. When Morgan instructed him to stop because he wanted to ask further questions, defendant admitted that he kept walking. He informed Morgan that because he had not done anything wrong, he would not answer any questions. Defendant eventually stopped walking because he was unsure if Morgan would taser him.

The trial court relied solely on the undisputed facts—that defendant was in the apartment complex, that the apartment complex was posted with "no trespassing" signs, and that defendant admitted to Morgan that he was not a resident of the complex—to hold that Morgan had reasonable suspicion to believe that defendant was trespassing.

On appeal, defendant claims that based on the totality of the circumstances, Morgan did not have reasonable suspicion to believe that he was engaging in criminal activity. This Court reviews a trial court's factual findings at a suppression hearing for clear error, but it reviews de novo the trial court's ultimate ruling on the motion to suppress. *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005).

Under certain circumstances, a police officer may detain an individual for the purpose of investigating possible criminal behavior even if there is no probable cause to support an arrest. *Terry v Ohio*, 392 US 1, 22, 30-31; 88 S Ct 1868; 20 L Ed 2d 889 (1968); *People v Jenkins*, 472 Mich 26, 32; 691 NW2d 759 (2005). If the officer has reasonable suspicion that criminal activity is afoot, the brief detention will not violate the fourth amendment. *Id.* "Reasonable suspicion" is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence. *Illinios v Wardlow*, 528 US 119, 123; 120 S Ct 673; 145 L Ed 2d 570 (2000). It exists when the officer has "a particularized suspicion, based on an objective observation, that the person has been, is, or is about to be engaged in criminal wrongdoing." *People v Shabaz*, 424 Mich 42, 59; 378 NW2d 451 (1985). Whether an investigatory stop is constitutionally valid is determined case by case on the basis of the totality of the facts and circumstances. *People v Oliver*, 464 Mich 184, 192; 627 NW2d 297 (2001).

In this case, it was undisputed that defendant was on the premises of the Interfaith Homes apartment complex, that "no trespassing" signs were posted throughout the complex, and that defendant, when asked by Morgan, admitted that he was not a resident of the complex. Morgan was conducting a directed patrol in the apartment complex due, in part, to the increased number of trespassers at the complex. Under these circumstances, the trial court did not err in holding that Morgan had reasonable suspicion to believe that defendant was trespassing.

Defendant also claims on appeal that the trial court erred when it instructed the jury that whether the underlying arrest was illegal was of no consequence to a charge of resisting or obstructing. Because defendant did not object to the instruction at trial, we review defendant's claim for plain error affecting his substantial rights. *People v Rodriguez*, 251 Mich App 10, 24; 650 NW2d 96 (2002).

Defendant was convicted of resisting and obstructing a police officer under MCL 750.81d(1), which states that it was a felony for an individual to assault, batter, wound, resist, obstruct, oppose, or endanger a person who the individual knows or has reason to know is performing his or her duties. In *People v Ventura*, 262 Mich App 370, 375-376; 686 NW2d 748 (2004), this Court interpreted MCL 750.81d(1) as not including the requirement found in MCL 750.479 that the underlying arrest be legal. In accordance with *Ventura*, the trial court instructed the jury that it did not matter whether the underlying arrest was illegal. The court also instructed the jury about the definition of "obstruct," which includes the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command. Defendant claims this definition and the *Ventura* holding allow an individual to *passively* fail to obey an *unlawful* command by the police, even during the course of an arrest. This argument fails because the *Ventura* Court explicitly refused to read in a lawfulness requirement. *Id*. at 376. In addition, defendant's actions in this case were knowing and active and the police commands were lawful. As such, there was no plain error in the jury instructions.

Affirmed.

/s/ Patrick M. Meter
/s/ Joel P. Hoekstra
/s/ Deborah A. Servitto