

2012 IL App (2d) 110922-U
No. 2-11-0922
Order filed September 18, 2012

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellant,)	
)	
v.)	No. 11-CF-560
)	
ANTWONE HOOKS,)	Honorable
)	Timothy Q. Sheldon,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Zenoff and Hudson concurred in the judgment.

ORDER

Held: The trial court erred in dismissing and/or suppressing evidence related to charges of aggravated battery to a peace officer and resisting a peace officer (both charges evidently stemming from an unlawful arrest), as the fact that the arrest was unlawful did not prevent the prosecution of the offenses that defendant allegedly committed in response.

¶ 1 Defendant, Antwone Hooks, was charged with aggravated battery to a peace officer (720 ILCS 5/12-4(b)(18) (West 2010)), resisting a peace officer (720 ILCS 5/31-1(a-7) (West 2010)), and criminal trespass to real property (720 ILCS 5/21-3(a)(2) (West 2010)). The trial court granted his motion to quash his arrest and suppress evidence. The motion contended that the police lacked

probable cause to arrest him for criminal trespass. The State appeals, contending that the trial court erred by dismissing the aggravated battery charge and suppressing evidence related to the battery and resisting charges. The State contends that it should be able to prosecute those charges because defendant was not authorized to resist the arrest, even if it was unlawful. We affirm in part, reverse in part, and remand.

¶ 2 Defendant was arrested on March 16, 2011, at the entrance to the Batavia Apartments, from which he had been banned. He filed a motion to quash his arrest and suppress evidence. The motion asserted in general terms that the police lacked probable cause to arrest him. The motion further alleged that, during the arrest, “the police and prosecution may have become aware of the existence of certain physical evidence, and other direct and indirect fruits of the illegal arrest.”

¶ 3 At a hearing on the motion, Officer Thomas Doggett testified that on March 16, 2011, he saw defendant walking near the intersection of Raddant and East Wilson roads. Defendant “looked angry” and was “moving aggressively.” He contacted Officer Gramme, advising him that he had seen a person heading east toward the Batavia Apartments who “look[ed] kind of suspicious.”

¶ 4 Doggett and Gramme met defendant at the entrance to the apartment complex. Doggett asked defendant to take his hand out of his pocket because he was concerned that he might have a gun. Defendant complied and pulled out his wallet. In response to a request for identification, he produced a state identification card.

¶ 5 Doggett “checked over the radio” and learned that defendant had been banned from the complex. Doggett advised defendant that he was not allowed at the complex and told him to leave. However, he did not leave. Doggett described defendant as “ranting primarily. He was very angry.” (Defendant was apparently upset about his car having been towed from the complex.) After defendant repeatedly refused to leave the area, Doggett placed him under arrest.

¶ 6 The trial court granted the motion to quash arrest, ruling that there was no evidence that defendant had violated the law. The following colloquy then occurred between the trial court, Assistant State’s Attorney Christina Wascher, and defense counsel Kathleen Colton:

“MS. WASCHER: Judge, I would ask what specifically, if we can have a ruling what specifically is being suppressed because

THE COURT: The arrest is quashed and any items seized pursuant to that arrest are suppressed as fruit of the poisonous tree.

MS. WASCHER: Which there were none for aggravated battery and resisting.

THE COURT: So the arrest is quashed.

MS. COLTON: And Judge, I have asked in my motion that, also, any statements that the defendant made be suppressed as fruit of the poisonous tree, as well as observing evidence on the part of the officer.

THE COURT: I am granting that request as fruits of the poisonous tree.

MS. WASCHER: Judge, I still don’t believe that gets rid of the charge of resisting or aggravated battery as an unlawful—you cannot resist an unlawful arrest or commit further crimes in custody under the basis of the unlawful arrest.

THE COURT: So the resisting charge remains.

MS. WASCHER: And I believe the aggravated battery as well, which was committed afterwards.

THE COURT: The Court also has a very, very similar issue pending on whether or not the subsequent actions after an illegal arrest can survive and the but forth [*sic*] rule. That but for the illegal stop and seizure, there would have been no further charges. So, however,

the case law seems to be replete that even if it is illegal, you may not resist. So the Court would allow the resisting charge to stand and quash the other charges.”

¶ 7 The record contains a preprinted order with “MTQ/S is granted,” printed near the bottom (presumably referring to the motion to quash and suppress). The State filed a certificate of impairment and a timely notice of appeal.

¶ 8 The State contends that the trial court erroneously “quashed” the aggravated battery charge and suppressed evidence related to that charge and the resisting charge despite its apparent agreement with the prosecutor that a person has no right to resist even an illegal arrest. We note that defendant has not filed a brief. However, we will consider the merits of the appeal pursuant to *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128 (1976). See also *People v. O’Brien*, 227 Ill. App. 3d 302, 305 (1992) (*Talandis* rule applies to criminal cases). Our review turns on a legal issue and thus is *de novo*. *People v. Flint*, 2012 IL App (3d) 110165, ¶ 12.

¶ 9 It is well established that the exclusionary rule does not extend to evidence of a defendant’s unlawful conduct, such as assault, in reaction to an illegal search or arrest. *People v. Abrams*, 48 Ill. 2d 446, 456 (1971); *People v. McCrimmon*, 225 Ill. App. 3d 456, 464 (1992). The reason for the rule is that suppressing such evidence would “encourage unlawful and retaliatory conduct.” *McCrimmon*. 225 Ill. App. 3d at 465. Thus, in *McCrimmon*, the court held that, even if, *arguendo*, an officer’s presence on the property was unlawful, his observations of a subsequent aggravated battery need not be suppressed. *Id.* at 464-65.

¶ 10 Here, even if defendant was wrongfully arrested on the trespassing charge—a point the State does not contest on appeal—evidence relating to the resisting arrest and aggravated battery charges

should not have been suppressed.¹ The trial court recognized this with regard to the resisting charge when it stated that “the resisting charge remains.” Nevertheless, the court did not directly respond to the prosecutor’s question about the aggravated battery charge, stating that it would “quash the other charges.”² Moreover, the trial court apparently suppressed all evidence resulting from the arrest, including “observing evidence on the part of the officer,” which would presumably include his observations of defendant’s post-arrest conduct.

¶ 11 Accordingly, we reverse the trial court’s order to the extent that it dismissed the aggravated battery charge and suppressed evidence of the officers’ observations relative to the aggravated battery and resisting arrest charges. As the State does not challenge the quashing of defendant’s arrest on the trespassing charge or the dismissal of that charge, we affirm the court’s order on those issues.

¶ 12 The judgment of the circuit court of Kane County is affirmed in part and reversed in part, and the cause is remanded.

¶ 13 Affirmed in part and reversed in part; cause remanded.

¹The State’s argument presumes that the aggravated battery charge arose during the course of defendant’s arrest. Although this is not completely clear from the record, the indictment alleges that the offense occurred on the same day defendant was arrested for trespassing and that the victim was one of the arresting officers.

²The State assumes that the trial court intended to “dismiss” the charges, as quashing a charge is a legal impossibility.