

[Cite as *State v. Taylor*, 2015-Ohio-1117.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO,)	
)	CASE NO. 13 MA 15
PLAINTIFF-APPELLEE,)	
)	
- VS -)	OPINION
)	
GEORGE TAYLOR,)	
)	
DEFENDANT-APPELLANT.)	

CHARACTER OF PROCEEDINGS:	Criminal Appeal from Youngstown Municipal Court, Case No. 12 CRB 2469.
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JUDGMENT:	Affirmed.
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APPEARANCES:	
For Plaintiff-Appellee:	Attorney Dana Lantz Prosecuting Attorney Attorney Kathleen Thompson Assistant Prosecuting Attorney City of Youngstown Prosecutor's Office 26 S. Phelps Street, 4th Floor Youngstown, OH 44503

For Defendant-Appellant:	Attorney Timothy J. Cuning Scullin & Cuning, LLC 940 Windham Court, Suite 4 Youngstown, OH 44512
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JUDGES:
Hon. Mary DeGenaro
Hon. Gene Donofrio
Hon. Cheryl L. Waite

Dated: March 18, 2015

[Cite as *State v. Taylor*, 2015-Ohio-1117.]
DeGenaro, J.

{¶1} Defendant-Appellant, George Taylor, appeals the judgment of the Youngstown Municipal Court convicting him of obstructing official business and disorderly conduct and sentencing him accordingly. Taylor challenges the trial court's denial of his motion to dismiss the charges based upon an alleged unlawful arrest. Upon review, Taylor's assignments of error are meritless. There are no provisions in the Criminal Rules to challenge an unlawful arrest via a motion to dismiss. Instead, evidence gathered as a result of an unlawful arrest may be challenged via a motion to suppress. An unlawful arrest standing alone is not a sufficient basis to grant a pretrial motion to dismiss the charges. Accordingly, the judgment of the trial court is affirmed.

Facts and Procedural History

{¶2} On November 9, 2012, Taylor called 911 to report that someone had shot at him. When officers arrived at the group home where Taylor resides, they spoke to Taylor outside. Taylor informed the officers that he had been shot at while visiting a house on Earle Street. He insisted that he accompany the officers back to that location, but when officers told him he could not due to safety concerns, Taylor became very angry and agitated and began to loudly yell curse words at officers and use foul hand gestures, claiming that the police did not "want to do anything for him." The officers noted that Taylor smelled strongly of alcohol and Taylor admitted that he had consumed 3-4 drinks earlier.

{¶3} The officers tried to calm Taylor down to no avail; Taylor continued yelling curse words at police in the presence of at least 3-4 residents of the facility, who had come outside upon hearing the commotion. Taylor started to walk away and one of the officers grabbed him and explained to him again that the police could not accompany him back to the house where he was allegedly shot at; that it was too dangerous. Taylor became angrier and more belligerent; the officer let him go and he started to go inside the group home, all the while continuing to curse at the police. When asked he refused to come out of the residence. Officers then pursued Taylor into the facility and arrested him after a struggle; they eventually used a taser to subdue him. The area where Taylor's arrest took place was described as a lobby or common area.

{¶4} As a result of this incident, Taylor was charged by complaint with one count

of disorderly conduct, R.C. 2917.11(A), a fourth-degree misdemeanor, and one count of obstructing official business, R.C. 2931.21(A), a second-degree misdemeanor. He was arraigned, pled not guilty and counsel was appointed.

{¶5} On December 5, 2012, Taylor filed a motion to dismiss the charges against him. He alleged that his November 9, 2012 arrest violated the Fourth Amendment to the U.S. Constitution and Article I, Sections 1, 14 and 16 of the Ohio Constitution because the police lacked probable cause to believe he violated the disorderly conduct statute; and because he was arrested inside his residence, without a warrant or exigent circumstances, which the State opposed. An evidentiary hearing was held on the motion, at which Youngstown Police Officer George Edward Anderson testified. In a January 3, 2013 entry, the trial court denied the motion to dismiss.

{¶6} Taylor then pled no contest to the charges. The trial court convicted him of both offenses and sentenced Taylor accordingly. This court granted Taylor's subsequent motion for delayed appeal.

Motion to Dismiss based upon Alleged Unlawful Arrest

{¶7} Taylor raises three assignments of error, all of which challenge the trial court's denial of his motion to dismiss based upon an alleged unlawful arrest. For clarity of analysis, they will be discussed together, and assert, respectively:

"The trial court erred in finding that there was probable cause to believe that Appellant committed a criminal offense."

"The police lacked the exigent circumstances needed to make a warrantless arrest inside Appellant's home."

"Appellant could not be arrested for a minor misdemeanor arrest without one of the factors of R.C. 2935.26 present."

{¶8} Although not raised by the State, the following issue is dispositive of Taylor's arguments. Specifically, there are no provisions in the Criminal Rules to challenge an

unlawful arrest via a motion to dismiss. Moreover, an unlawful arrest, standing alone, is not a sufficient basis to dismiss the charges.

{¶9} In *City of Steubenville v. Taylor*, 7th Dist. No. 96-JE-9, 1998 WL 30084 (Jan. 21, 1998), where the defendant challenged the trial court's denial of his motion to dismiss wherein he asserted his arrest was unlawful, this court concluded that

* * * even if appellant's arrest was illegal, an illegal arrest does not constitute grounds for the remedy sought in appellant's motion, namely, dismissal of the charges against him. See *State v. Hooper* (1966), 10 Ohio App.2d 229, 227 N.E.2d 414.

Under Ohio criminal procedure there is no provision for a motion to dismiss a criminal case founded on a lack of probable cause to arrest the defendant. See *State v. Hartley* (1988), 51 Ohio App.3d 47, 554 N.E.2d 950.

"[T]he proper remedy for a Fourth Amendment violation is suppression of the evidence wrongfully obtained, not dismissal of the charges." *Blanchester v. Hester* (1992), 81 Ohio App.3d 815, 820, 612 N.E.2d 412.

As the United States Supreme Court has previously stated, "[a]n illegal arrest, without more, has never been viewed as a bar to subsequent prosecution, nor as a defense to a valid conviction." *United States v. Crews* (1980), 445 U.S. 463, 474, 100 S.Ct. 1244, 63 L.Ed.2d 537. Crim.R. 12(B) makes it incumbent on a defendant who wishes to challenge evidence that was illegally obtained to move to suppress the evidence and to state the grounds of the illegality. See *State v. Becvar* (1989), 63 Ohio App.3d 163. Failure to move for the suppression of evidence illegally obtained constitutes waiver of the grounds for exclusion. See *State v. Wade* (1978), 53 Ohio St.2d 182, 373 N.E.2d 1244. Because appellant did not seek to suppress evidence but instead sought to have the charges against him dismissed, the trial court correctly denied appellant's motion.

Taylor at *2. See also, *State v. Ali*, 154 Ohio App. 3d 493, 2003-Ohio-5150, 797

N.E.2d 1019 (7th Dist.)

{¶10} *City of Columbus v. Galang*, 10th Dist. No. 02AP–1441, 2003-Ohio-4506 is also instructive. In *Galang*, the defendant was charged with one count of voyeurism, in violation of a city ordinance, and filed "Motion to Suppress/Dismiss Based on Lack of Probable Cause to Arrest" seeking suppression of inculpatory statements he made to police, in addition to dismissal of the charge. *Id.* at ¶2. The trial granted the motion, dismissing the charge. On appeal, the city argued that even though the officer lacked probable cause to arrest the defendant, the defendant's remedy would have been a motion to suppress the evidence obtained as a result of the illegal arrest, not dismissal of the city's complaint against the defendant. *Id.* at ¶6-7. The Tenth District agreed:

Generally, "the proper remedy for a Fourth Amendment violation is suppression of the evidence wrongfully obtained, not dismissal of the charges. 'An illegal arrest, without more, has never been viewed as a bar to subsequent prosecution, nor as a defense to a valid conviction.' *United States v. Crews* (1980), 445 U.S. 463, 474, 100 S.Ct. 1244, 1251, 63 L.Ed.2d 537, 547." *Blanchester v. Hester* (1992), 81 Ohio App.3d 815, 820, 612 N.E.2d 412. As a result, an "illegal arrest does not generally require dismissal of criminal charges, although it will require the suppression of evidence seized as a result of the arrest. *Fairborn v. Douglas* (1988), 49 Ohio App.3d 20, 21, 550 N.E.2d 201. In other words, even if the arrest was illegal, that conduct does not affect the validity of a subsequently filed affidavit, complaint, or indictment commencing criminal proceedings predicated upon the arrest." *State v. Schultz* (Mar. 11, 1992), Athens App. No. 1480. Accordingly, "[t]he illegality of an accused's detention by the police cannot deprive the government of the opportunity to prove the accused's guilt through the introduction of evidence wholly untainted by the police misconduct." *Id.*

* * *

Whether the trial court believed it was hearing only a motion to suppress, or

motions to suppress and to dismiss, is irrelevant. Although Crim.R. 12(A) and 12(B) provide for pretrial challenges to criminal proceedings by use of a motion to dismiss in appropriate circumstances, "only those motions capable of being determined without the trial of the general issue may be raised by motion before trial. * * * The issue as to the legal sufficiency of the evidence is not properly raised by a pretrial motion and that motion should have been overruled." *State v. McNamee* (1984), 17 Ohio App.3d 175, 176, 478 N.E.2d 843. (Emphasis sic.) In essence, "defendant is attempting to create in a criminal case the equivalent of a motion for summary judgment and there is no provision for such a motion." *State v. Barchus* (June 2, 1992), Wyandot App. No. 16-91-10.

* * *

The trial court should have granted only a motion to suppress; it should not have granted defendant's request to dismiss the complaint.

Galang at ¶8, ¶11-12.

{¶11} Even assuming *arguendo* the police lacked probable cause to arrest Taylor, the proper remedy would not have been to dismiss the charges; rather, the remedy would have been to suppress improperly obtained evidence. Dismissal of the charges was the only remedy sought by Taylor in his pretrial motion, and as held by the court in *Galang*, the legal sufficiency of the evidence cannot be challenged by a pretrial motion.

{¶12} Taylor relies on *State v. Dotson*, 133 Ohio App.3d 299, 727 N.E.2d 957 (7th Dist.1999), in support of his argument that his motion to dismiss should have been granted; however, it is procedurally distinguishable and therefore its holding inapplicable. In *Dotson*, a disorderly conduct conviction after a bench trial based upon similar conduct was successfully challenged on sufficiency grounds. *Id.* By contrast, instead of proceeding to trial in this matter, Taylor pled no contest to the charges, which "is not an admission of defendant's guilt, but is an admission of the truth of the facts alleged." Crim.R. 11(B)(2). Therefore, pleading no contest to charges forecloses the defendant

from challenging the factual merits of the charge on appeal. *State v. Bird*, 81 Ohio St.3d 582, 584, 692 N.E.2d 1013 (1998).

{¶13} In sum, Taylor's assignments of error are meritless. There are no provisions in the Criminal Rules to challenge an unlawful arrest via a motion to dismiss. Instead, evidence gathered as a result of an unlawful arrest may be challenged via a motion to suppress. An unlawful arrest standing alone is not a sufficient basis to grant a pretrial motion to dismiss the charges. Accordingly, the judgment of the trial court is affirmed.

Donofrio, P.J., concurs.

Waite, J., concurs.