

If it is true that appellant had a right to resist the arrest at issue in this case, public policy requires a change in the applicable law. In this day and age, no person should have the right to resist an arrest made by a uniformed law enforcement officer. When the arrest is made by a uniformed deputy sheriff in the hearing room of a courthouse, the arrested person should not have the first call on the issue of whether that arrest was illegal. I am persuaded, however, that there are two reasons why appellant's conviction should be affirmed.

I

Rule 9-207(f)(3) authorizes the master to request immediate judicial action on his or her recommendation that a person be found in contempt. Rule 2-541(c) expressly provides that the master's "power to regulate all proceedings in the hearing" includes the power to "continue, and adjourn the hearing, as required." If he or she concludes that the contemptuous refusal to pay child support is so serious that a judge should "immediately" (1) order that the contemptnor be confined, and (2) establish a purge provision, the master is expressly authorized to declare a recess in order to make such a recommendation to a circuit court judge. That is precisely what occurred in this case.¹

The narrow question before us is whether appellant was free

¹It is inconsequential that no recess was ever formally "declared." Appellant interrupted the master, and fought with the deputies, as soon as the master announced her intention to request immediate judicial action.

to walk out of the courthouse while the master was looking for a judge to consider her recommendation.² Only if appellant was free to leave the hearing room immediately did he have the right to use the force that he used against the deputies. In my opinion, under the applicable rules (1) appellant had no such right, (2) the master was empowered by implication to order that appellant be detained for a brief period of time while she attempted to obtain judicial action on her recommendation, and (3) the deputies were obliged to take appellant into custody pursuant to the master's announced intention "to recommend that the incarceration be immediate from the courtroom, and that an immediate Order be entered."

II

It has long been the law in Maryland that the validity of an arrest depends upon whether the officer had probable cause to arrest, not whether the officer articulated the correct basis for the arrest.

Dennis v. State, 345 Md. 649, 658 n.3 (1997)(Raker, J., dissenting). Even if the master had no authority to order that appellant be arrested, (1) a deputy sheriff has the power of arrest, (2) contempt of court is a criminal offense, and (3) both contempt of court and the misdemeanor proscribed by Section 10-

²While this case does not present the question of how long a person can be detained while the master is attempting to obtain judicial action on a recommendation for confinement, or the question of where the person should be detained during that period of time, I disagree with the majority's comment that there is "little basis" to conclude that appellant's detention would have been brief or reasonable. In my opinion, there is no basis for concluding otherwise.

203 of the Family Law Article are offenses of a continuing nature. In this case, the master's announcement of her intention "to recommend that the incarceration be immediate from the courtroom, and that an immediate Order be entered," supplied the deputies with probable cause to arrest appellant for either or both of those offenses. Appellant's arrest was therefore lawful under Art. 27, Sec. 594B(b).

Proceedings on Remand

This case should not be remanded. As the majority has decided to do so, however, the State should now be afforded "the opportunity to prove the legality of (appellant's) arrest ... without reliance on the [authority of the master]." *Collins v. State*, 17 Md. App. 376, 385 (1973). In that case, we reversed a possession of heroin conviction because the contraband introduced into evidence against the appellant had been seized from his person under the authority of a warrant that had been issued on the basis of an affidavit that "could not support a finding of probable cause." *Id.* at 383. Chief Judge Orth explained why a remand was necessary:

Our holding that the arrest warrant was invalid, and the arrest, as made under its authority, was illegal, does not end our inquiry... It is the existence of probable cause at the time of the arrest which is the measure of the legality of the arrest. *Evans v. State*, 11 Md. App. 451. Probable cause may be based on information collectively within the knowledge of the police. *Hebron v. State*, 13 Md. App. 134. So even when an officer acting on a direction to arrest was

personally without sufficient probable cause to justify the arrest, it may be shown that information within the knowledge of the police team constituted probable cause. *Thompson v State*, 15 Md. App. 335. In such case, of course, the State is required to produce the evidence on which the officers initiating the arrest acted...

... Although it is patent from the transcript of the trial on the merits that the conviction of Collins was predicated solely on the heroin recovered from his person, we shall remand the case for a new trial. The State may be able to show that there existed probable cause for a warrantless arrest of Collins... In other words, on retrial the State has the opportunity to prove the legality of the arrest of Collins without reliance on the warrant,... The legality of a warrantless arrest would be proved by showing that the police had facts and circumstances within their knowledge or reasonably trustworthy information thereof, sufficient to warrant a reasonably cautious [person] in believing that Collins had(committed the offense for which the warrant was issued).

Id. at 383-385. That holding is applicable here. If the record of this case does not now support the conclusion that appellant's arrest was lawful under Art. 27, Sec. 594B(b), there is no valid reason why the State should be denied the right to present additional evidence on that issue.

REPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1432

SEPTEMBER TERM, 1996

KEVIN JOSEPH WIEGMANN

v.

STATE OF MARYLAND

Murphy, C.J.
Hollander,
Bishop, John J.
(Retired, Specially
Assigned)

JJ.

Dissenting Opinion by Murphy, C.J.

Filed: December 1, 1997

