

**IN THE COURT OF APPEALS 12/29/95**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 94-KA-01143 COA**

**JOHNNY MARTIN A/K/A JOHNNY C. MARTIN A/K/A JOHNNY EARL MARTIN, JR.**

**APPELLANT**

**v.**

**CITY OF ABERDEEN**

**APPELLEE**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND  
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. BARRY W. FORD

COURT FROM WHICH APPEALED: MONROE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

KELLY HARDWICK

ATTORNEY FOR APPELLEE:

HAROLD J. BARKLEY, III

NATURE OF THE CASE: MISDEMEANOR: RECKLESS DRIVING, NO TAGS, RESISTED  
ARREST, FAILED TO YIELD TO BLUE LIGHTS, RAN STOP SIGN

TRIAL COURT DISPOSITION: GUILTY JUDGMENT: SENTENCED TO SIX MONTHS IN  
JAIL WITH ALL BUT FIVE DAYS SUSPENDED, FINED AND TAXED WITH COSTS

BEFORE BRIDGES, P.J., KING, AND SOUTHWICK, JJ.

SOUTHWICK, J., FOR THE COURT:

On *de novo* appeal, Johnny Martin was found guilty by the Monroe County Circuit Court of charges relating to his operation of a car on February 19, 1994. Martin appeals, contending that he was subjected to an unlawful arrest since the arresting officers did not have a warrant, did not give him any *Miranda* warnings, and he denied the charges. Without expressly saying so, Martin attacks the validity of his arrest. His contentions on appeal are without merit and we affirm.

Martin was identified by police as having run several stop signs after leaving a bar and driving a car without license plates. When officers turned on their blue lights, Martin attempted to elude them, ultimately colliding with a police car. Martin and his companion jumped out of the car and a chase ensued. Martin escaped. In examining the now abandoned car, the police discovered a ticket bearing Martin's address. Police went to Martin's residence to arrest him.

The police located Martin and informed him that he was wanted for questioning in the case. The police explained the crime in which he was a suspect. Martin denied knowing anything about the crime and refused to go with police. He had to be forcibly restrained and taken into custody.

Martin was charged with reckless driving, driving without a license plate, resisting arrest, failure to yield to blue lights, running a stop sign, and malicious destruction of city property. A trial took place in municipal court and Martin was found guilty. Martin appealed his conviction to the circuit court and a *de novo* trial was held. At the close of the evidence, the charge of malicious destruction was dismissed but Martin was found guilty of all other charges. At trial, Martin continued to deny involvement in the crime. In addition to his own testimony, he produced one witness who testified that another individual was driving the car. That individual testified at trial and denied that he was the driver. In addition, the police identified Martin as the driver of the car.

Martin's appellate counsel has provided us with a brief that presents the following issue:

When someone denies knowing about or participating in a misdemeanor it is lawful for that person to resist an arrest when the arresting officers do not present a warrant for the arrest, subsequently charged the person with resisting arrest and did not "Mirandize" the arrestee, and had sufficient time to secure an arrest warrant if probable cause had existed because the officers were not in "hot pursuit" of a suspect nor were there exigent circumstances precluding the securing of a warrant.

It is unclear exactly what issue is being raised. No issue concerning lawfulness of the arrest or privilege to resist arrest was presented for the trial court to consider. The City of Aberdeen concludes that Martin addresses the validity of an arrest without a warrant, the impact of *Miranda* on his conviction, and whether the judgment of guilt was contrary to the overwhelming weight of the evidence. The city is unduly generous in the issues it recognizes. We consider only whether Martin's arrest was valid and the purported absence of *Miranda* warnings.

In Mississippi, it is permissible for a police officer to make a warrantless arrest of an individual for a breach of the peace committed in the officer's presence. Miss. Code Ann. § 99-3-7(1) (1972). In the case before us, the police positively identified Martin as the driver of the car and an individual who had recently been cited when driving the car. The identifying officers were also the officers who

witnessed Martin's attempt to evade police custody that resulted in an automobile accident. Such events constitute a breach of the peace within the meaning of this statute. *See Goforth v. City of Ridgeland*, 603 So. 2d 323, 326 (Miss. 1992) (citation omitted). With the probable cause created by these events, the police immediately found Martin and attempted to arrest him.

As to *Miranda*, there is no evidence presented to us that the absence of *Miranda* warnings caused Martin to suffer harm. No post-arrest statements were offered. No absence of counsel was claimed. There was no evidence to exclude by virtue of the absent warnings. Absent such harm, there is no *Miranda* issue for us to consider. *Weissinger v. State*, 218 So. 2d 432, 434 (Miss. 1969).

**THE JUDGMENT OF CONVICTION OF THE CIRCUIT COURT OF MONROE COUNTY OF RESISTING ARREST AND SENTENCE OF SIX (6) MONTHS IN THE COUNTY JAIL WITH ALL BUT FIVE (5) DAYS SUSPENDED, FINE OF \$150.00, AND IMPOSITION OF COSTS OF \$45.00; RECKLESS DRIVING AND FINE OF \$150.00 AND IMPOSITION OF COSTS OF \$45.00; LEAVING THE SCENE OF AN ACCIDENT AND FINE OF \$150.00 AND IMPOSITION OF COSTS OF \$45.00; RUNNING A STOP SIGN AND FINE OF \$40.00 AND IMPOSITION OF COSTS OF \$45.00; FAILING TO YEILD TO BLUE LIGHTS AND FINE OF \$100.00 AND IMPOSITION OF COSTS OF \$45.00; DRIVING WITHOUT A LICENSE PLATE AND FINE OF \$40.00 AND IMPOSITION OF COSTS OF \$45.00 IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.**

**FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN, AND PAYNE, JJ., CONCUR.**