

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

KIMBERLY ANN CARTWRIGHT,

Defendant-Appellee.

---

UNPUBLISHED

May 21, 1996

No. 183631

LC No. 94-007114 FH

Before: Hoekstra, P.J., and MacKenzie and R.L. Tahvonen\*, JJ.

PER CURIAM.

Defendant was charged with manufacturing marijuana, MCL 333.7401(2)(c); MSA 14.15(7401)(2)(c), possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and felon in possession of a firearm, MCL 750.224f; MSA 28.421(6). Additionally, defendant was charged with being an habitual offender, second offense, MCL 769.10; MSA 28.1082. The district court denied defendant's motion to suppress as evidence certain marijuana and firearms seized from defendant's home. The circuit court reversed, suppressing the evidence and dismissing the two weapons charges. The People appeal by leave granted. We affirm.

On August 31, 1994, a Bay Area Narcotics Enforcement Team detective flew a helicopter over defendant's mobile home and spotted marijuana. Defendant fled the scene in a vehicle, while her husband entered the house and then fled into a wooded area with what appeared to be a rifle covered by a coat. Ground crew officer Gary Theunick then entered defendant's mobile home to conduct a safety inspection or protective sweep. While conducting the sweep, he saw several weapons in the back room of the trailer and marijuana throughout the trailer. A search warrant was eventually procured, in part on the basis of these observations, resulting in the seizure of the marijuana and firearms. The district court concluded that the police officers' initial warrantless entry into defendant's mobile home was an unreasonable search under the Fourth Amendment. The court nevertheless denied defendant's motion to suppress on the ground that the contraband would have been inevitably discovered. The circuit court found no abuse of discretion in the district court's determination that the

initial search, or protective sweep, was in violation of defendant's Fourth Amendment rights against unreasonable search and seizure. The court, however, concluded that the district court committed clear error when it ruled that the inevitable discovery rule was a proper basis for denying defendant's motion to suppress.

On appeal, the People contend that the district and circuit courts committed clear error in finding that the protective sweep of defendant's mobile home was in violation of her Fourth Amendment rights. According to the People, neither a warrant nor probable cause was required in this case due to the exigent circumstances exception to the Fourth Amendment's warrant requirement. Defendant claims that the concern over the safety of the police officers surrounding defendant's trailer provided the necessary circumstance to excuse the warrantless search. We disagree.

The exigent circumstances exception to the warrant requirement allows police to enter a dwelling if the officers possess probable cause to believe that a crime was recently committed on the premises, and probable cause to believe that the premises contain evidence or perpetrators of the suspected crime. *People v Davis*, 442 Mich 1, 24; 497 NW2d 910 (1993). The police must also show the existence of an actual emergency on the basis of specific objective facts which reveal the necessity for immediate action to (1) prevent the imminent destruction of evidence, (2) protect the officers or others, or (3) prevent the escape of a suspect. *People v Blasius*, 435 Mich 573, 593-594; 459 NW2d 906 (1990). Thus, in order to justify a warrantless search under the exigent circumstances exception, the prosecutor must establish not only that the police officers were potentially in need of protection, but also that there is probable cause to believe that the premises contain evidence or perpetrators of the suspected crime. *Id.*

Here, the prosecutor only introduced evidence concerning the police officers' alleged need for protection. Based on his ruling that the search was unconstitutional, the district court apparently found that evidence lacking in veracity. This Court will defer to the trial court's resolution of factual issues, especially when it involved the credibility of witnesses. *People v Crowell*, 186 Mich App 505, 507-508; 465 NW2d 10 (1990), remanded 437 Mich 1004 (1991). We therefore find no error in the district court's determination that the initial search was not needed for the protection of the police, and hence was unconstitutional.

The People rely on numerous cases in supporting the claim that the protective sweep was constitutional. However, each of these cases is significantly distinct from the instant case. The People's reliance on *Warden, Maryland Penitentiary v Hayden*, 387 US 294; 87 S Ct 1642; 18 L Ed 2d 782 (1967), is misplaced because in that case the police were responding to a report that a perpetrator was in the house. In the present case, the police did not have any reason to believe that an additional suspect was located within defendant's trailer, nor did they have time constraint considerations if a suspect was later determined to be hiding inside.

Additionally, *Maryland v Buie*, 494 US 325; 108 L Ed 2d 276, 286-287; 110 S Ct 1093

(1990), is easily distinguished because, as the People concede, the protective sweep in *Buie* was conducted pursuant to an arrest. In the instant case, the police did not even have probable cause to believe that a perpetrator was located within the house trailer.

The People also claim that the circuit court clearly erred when it found that the inevitable discovery doctrine did not apply because the police were not pursuing an alternate line of investigation prior to the entry into defendant's house trailer. Again, we disagree.

Generally, for testimony to be admissible under the inevitable discovery doctrine, the prosecution must demonstrate (1) a reasonable probability that the evidence in question would have been discovered by lawful means but for the police misconduct, (2) that the leads making the discovery inevitable were possessed by the police at the time of the misconduct, and (3) that the police prior to the misconduct were also actively pursuing an alternate line of investigation. *United States v Cherry*, 759 F2d 1196, 1204 (5th Cir, 1985). When the interest in deterring police misconduct is absent, the third requirement may not apply. *Id.* at 1204-1205. On the other hand, when the police forego legal means of investigation in order to obtain evidence in violation of a suspect's constitutional rights, the need to deter is paramount and requires application of the exclusionary rule. *Id.* at 1205. See also *United States v Satterfield*, 743 F2d 827, 846 (CA 11, 1984) for the proposition that "the government cannot later initiate a lawful avenue of obtaining evidence and then claim that it should be admitted because its discovery was inevitable." Further, *United States v Griffin*, 502 F2d 959, 961 (CA 6, 1974) states "police who believe they have probable cause to search cannot enter a home without a warrant merely because they plan to subsequently get one".

In this case, then, the question become whether the police decided to forego legal means of investigation in order to obtain evidence. That question, in turn, is tantamount to determining whether or not the police entered defendant's trailer for their protection, as claimed. The question was answered by the district judge when he concluded that the police did not enter the mobile home for their own protection and rejected the theory that exigent circumstances justified the warrantless search. Applying *Cherry*, the circuit court properly concluded that the People were required to show the police were actively pursuing an alternate line of investigation when they initially entered defendant's mobile home. Having failed to make such a showing, we find no error in the court's decision to exclude the subject evidence.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Randy L. Tahvonen