

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD KAROUS BILDERBECK,

Defendant-Appellant.

UNPUBLISHED

December 6, 1996

No. 192050

LC No. 95-003617

Before: J.H. Gillis, P.J., and G.S. Allen and J.B. Sullivan, JJ.*

MEMORANDUM.

Defendant tendered a conditional plea of guilty to possession with intent to deliver marijuana, MCL 333.7401(2)(c); MSA 14.15(7401)(2)(c), and was sentenced to one year probation. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

Defendant's plea was conditioned on the right to appeal the trial court's denial of his motion to suppress the evidence. The motion was based on defendant's claim that exigent circumstances, upon which the police officers justified their entry into his home without a warrant, did not exist. This Court reviews the trial court's decision on the motion to suppress for clear error, i.e., whether this Court is "left with a definite and firm conviction that a mistake has been made." *People v Lombardo*, 216 Mich App 500, 504; 549 NW2d 596 (1996).

The risk of removal or destruction of evidence may constitute an exigent circumstance, justifying a search without a warrant. *People v Blasius*, 435 Mich 573, 582-583; 459 NW2d 906 (1990). To establish such an exigent circumstance, there must be articulable and objective facts to demonstrate that the risk of removal or destruction is imminent, not merely a possibility. *Id.*, 593-594.

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

We hold that the movement of the package, which contained forty pounds of marijuana within the house, combined with the lack of surveillance at the back of the house, presented merely a possibility that the evidence might be removed or destroyed. Thus, the trial court clearly erred in finding that there were exigent circumstances justifying the warrantless entry. *Blasius, supra*. However, because the evidence upon which the subsequently issued search warrant was based was obtained through an independent source, the error does not require reversal. *People v Smith*, 191 Mich App 644, 648, 650; 478 NW2d 741 (1991).

Affirmed.

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

/s/ Joseph B. Sullivan