

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

THERON DEVERE TUTTLE,

Defendant-Appellee.

UNPUBLISHED

June 3, 1997

No. 193492

Kent Circuit Court

LC No. 94-2435-6 FH

Before: Saad, P.J., and Hood and McDonald, JJ.

MEMORANDUM.

After surveillance failed to disclose any evidence that Rance Tuttle, for whom officers had a bench warrant, was on the premises, the officers revealed themselves, advised defendant that they had an arrest warrant for Rance Tuttle, and demanded entry to his home. Defendant told the officers that Rance Tuttle was not present, but the officers insisted that they had a legal right to enter to search for him, and defendant acquiesced.

The officers quickly ascertained that Rance Tuttle was indeed not to be found in the mobile home at that time. However, while looking for Rance Tuttle they had observed what they believed were the butts of burnt marijuana cigarettes and some drug paraphernalia, including pipes for smoking marijuana and scales. Trooper Anaya requested defendant's consent to examine the contents of a sealed box. Defendant refused until Trooper Anaya told defendant that if defendant refused, the trooper would obtain a search warrant. Defendant then acquiesced, but the trial court determined as a matter of fact unchallenged here that the search of the box, which revealed ten pounds of marijuana, was not consensual. Defendant was charged with possession with intent to distribute marijuana, *inter alia*, but those charges were dismissed when the Kent Circuit Court determined that the evidence necessary to support these charges, the ten pounds of marijuana, must be suppressed as the result of a violation of defendant's Fourth Amendment rights.

On this prosecutor's appeal, the prosecutor does not challenge the trial court's factual findings that the arrest warrant was invalid and that the search of defendant's personality in his own home was

nonconsensual. However, the prosecutor asks this Court to adopt a good faith exception to the Fourth Amendment's search warrant requirement.

The claim of good faith relates to the officers' ostensibly reasonable belief that the arrest warrant for Rance Tuttle for probation violation was valid. Inasmuch as the police involved were working with Rance Tuttle's probation officer, who should be charged with knowledge that Rance Tuttle's probation had been terminated before issuance of the warrant, it is doubtful, that a good faith exception could be properly invoked. Here, however, even assuming the arrest warrant were valid and that the police had not violated defendant's Fourth Amendment rights by entering his home with a months old arrest warrant without probable cause to believe that Rance Tuttle could be found on the premises, *Payton v New York*, 445 US 573; 100 S Ct 1371; 63 L Ed 2d 639 (1980), an arrest warrant for Rance Tuttle would not have authorized the police to search defendant's home for evidence to be used against defendant, in the absence of a search warrant. *Steagald v United States*, 451 US 204; 101 S Ct 1642; 68 L Ed 2d 38 (1981).

Affirmed.

/s/ Henry William Saad
/s/ Harold Hood
/s/ Gary R. McDonald