

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANIEL HENDERSON,

Defendant-Appellant.

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UNPUBLISHED

August 12, 2003

No. 239704

Macomb Circuit Court

LC No. 01-001866-FH

Before: Zahra, P.J., and Talbot and Owens, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii); resisting an officer serving process, MCL 750.479; maintaining a drug house, MCL 333.7405(1)(d); and possession of a firearm during the commission of a felony, MCL 750.227b. He was ordered to pay a fine for the first three convictions, and was sentenced to two years in prison for the felony-firearm conviction. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant refused to come out when officers went to his house to execute an arrest warrant. Because three firearms were registered to defendant, the situation was treated as if defendant was a barricaded gunman. Defendant was shown a copy of a LEIN return indicating that there was a valid arrest warrant when he questioned it, but still refused to come out. After a four-hour standoff, a Special Weapons and Tactics (SWAT) team arrived. Defendant came out and was arrested before they entered, however the SWAT team then did a protective search to ensure that the scene was safe, that there were no injured hostages, and because they had been told that there might be another person inside. During this protective search, one officer saw marijuana inside a paper bag in an attic crawl space. A search warrant was then obtained. More marijuana and a number of firearms were subsequently found.

Defendant first argues that the initial search violated the Fourth Amendment because the SWAT team did not have articulable facts to support a finding of exigent circumstances. He maintains that the fruits of the subsequent search were also inadmissible because they grew out of the initial search. In *People v Cartwright*, 454 Mich 550, 559; 563 NW2d 208 (1997), our Supreme Court held that “the validity of an entry for a protective search without a warrant depends on the reasonableness of the response, *as perceived by police.*” Here, the SWAT team

came on the scene after there had been a four-hour standoff with defendant and understood that there might be another person in the home. This information, even if erroneous, coupled with the knowledge that there were probably firearms in the home, provided more reason to conduct a protective search than the officers had in *Cartwright*. Accordingly, we conclude that defendant's Fourth Amendment rights were not violated during the initial search. Because the initial search was valid, the warrant obtained for the subsequent search was also valid.

Defendant next argues that because he was not at home, but sitting in a patrol car when the firearms were found, the firearms were not accessible or at his disposal and he, therefore, could not be convicted for possessing firearms while possessing the marijuana. He cites *People v Williams*, 212 Mich App 607; 538 NW2d 89 (1995), failing to note that it was expressly overruled in *People v Burgenmeyer*, 461 Mich App 431, 440; 606 NW2d 645 (2000). Because defendant was in the house alone for four hours leading up to the discovery of the firearms and marijuana, the jury could infer that these firearms were accessible and at defendant's disposal, and that he possessed both the drugs and the weapons at the same time.

Affirmed.

/s/ Brian K. Zahra  
/s/ Michael J. Talbot  
/s/ Donald S. Owens