

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

CALVIN A. PRICE,

Defendant-Appellee.

UNPUBLISHED

February 8, 2007

No. 273530

Genesee Circuit Court

LC No. 06-017633-FH

Before: Sawyer, P.J., and Fitzgerald and Donofrio, JJ.

PER CURIAM.

Defendant is charged with possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), felon in possession of a firearm, MCL 750.224f, possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, and maintaining a drug house, MCL 333.7405(1)(d). Much of the evidence supporting these charges was seized upon execution of a search warrant. The warrant was obtained as a result of contraband found during a protective sweep of the house where defendant was detained. Defendant moved to suppress the evidence, asserting that there was no basis for a protective sweep. The trial court conducted an evidentiary hearing and granted defendant's motion to suppress. It is from this order that the prosecution appeals by delayed leave granted. We reverse. This case is being decided without oral argument pursuant to MCR 7.214(E).

The prosecution's sole contention on appeal is that the trial court improperly granted defendant's motion to suppress given that the emergency aid, protective sweep, and exigent circumstances exceptions to the warrant requirement are applicable. Factual findings made in conjunction with a motion to suppress are reviewed for clear error. *People v Stevens (After Remand)*, 460 Mich 626, 650-631; 597 NW2d 53 (1999). However, to the extent that the trial court's decision is based upon issues of law, appellate review is de novo. *People v Kaslowski*, 239 Mich App 320, 323; 608 NW2d 539 (2000). Constitutional questions are reviewed de novo. *People v Pitts*, 222 Mich App 260, 263; 564 NW2d 93 (1997).

"Both the United States and Michigan Constitutions guarantee the right against unreasonable searches and seizures." *People v Beuschlein*, 245 Mich App 744, 749; 630 NW2d 921 (2001). "The lawfulness of a search or seizure depends on its reasonableness." Generally, a search conducted without a warrant is unreasonable unless it was conducted pursuant to an established exception to the warrant requirement. *Id.*, at 749. Under the emergency aid

exception to the search warrant requirement, an officer may enter a dwelling without a warrant if he reasonably believes that a person inside needs immediate aid. *Id.*, at 756. The officer must possess specific and articulable facts which merit that conclusion, and the officer may do no more than is reasonably necessary to determine whether a person needs assistance and to provide that assistance. *Id.*, at 756. Unlike the other exceptions to the warrant requirement, when entering a constitutionally protected area pursuant to the emergency aid exception, police officers are not required to have the probable cause traditionally required in searches for evidence. *People v Davis*, 442 Mich 1, 11-12; 497 NW2d 910 (1993). Once lawfully within a dwelling, “[t]he Fourth Amendment permits a properly limited protective sweep in connection with an in-home arrest if the police reasonably believe that the area in question harbors an individual who poses a danger to them or to others.” *Beuschlein, supra* at 757, citing *Maryland v Buie*, 494 US 325, 337; 110 S Ct 1093; 108 L Ed 2d 276 (1990). The United States Supreme Court has discussed principles with regard to protective sweeps incident to the arrest of someone in a dwelling. The *Buie* Court stated that incident to arrest, without any level of cause at all, officers can, as a precautionary matter, look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched. But, beyond this, “there must be articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene.” *Buie, supra* at 334. Furthermore, once police officers are lawfully in a position to view an item pursuant to a protective sweep, they may seize items if their incriminating character is immediately apparent. *Beuschlein, supra* at 758..

Defendant does not contest the legality of the officers’ initial entry into his home, but does contest the legality of the subsequent search of the basement. A review of the evidentiary hearing record reveals that officers were dispatched to defendant’s home after receiving a report regarding a man waving a gun out of a car and trying to abduct a woman at a nightclub. On arriving at the home, a woman approached the officers indicating that a female was inside the house, possibly being raped or killed by defendant. Officers went to the side door and heard a woman screaming hysterically. Given these facts, it was reasonable for the officers to believe that the hysterical female was in need of immediate aid. Consequently, entry into the home to check on the woman was justified by the emergency aid exception to the warrant requirement. *Beuschlein, supra* at 756.

Once the officers gained entry to the home, they observed a partially clothed female lying on the floor of the landing and defendant standing over her. After officers took hold of defendant, the woman ran out of the house screaming. Officer Torrey Ruffin placed defendant in handcuffs in the kitchen, which was one step up from the landing where defendant was initially discovered. While placing defendant in handcuffs, Ruffin did not notice any weapons on defendant’s person. Ruffin took defendant outside to the police cruiser and patted defendant down, finding a small baggie of cocaine and some money. Defendant was then arrested. Given that the dispatch message indicated that the suspect had a gun, yet no gun was found in defendant’s possession, officers became concerned that there might be another perpetrator in the house. Moreover, the serious nature of the incident a man with a gun was reportedly trying to abduct, rape, or kill a woman only served to amplify the danger faced by police and other potential victims in the house. The officers were justified in conducting a protective sweep to dispel the suspicion of danger. The sweep, a walk through, was limited in scope and duration

and was a reasonable means of securing their persons and others at the house. Discovering what appeared to be cocaine in plain view, a warrant was obtained. Given the circumstances, a limited protective sweep was proper. *Buie, supra* at 327 (an officer performing a protective sweep is entitled to perform a cursory visual inspection of those places in which a person may be hiding to dispel the suspicion of danger); *Beuschlein, supra* at 758 (“[a]lthough police intervention was in response to a domestic dispute and [the woman inside the residence] appeared to be uninjured, other persons or children could have been present in the home, justifying at least a walk through the house to confirm that no one else was in danger.”) With regard to the contraband discovered in plain view during the sweep, the police properly seized it pursuant to the plain view doctrine. *Beuschlein, supra* at 758.

Defendant contends that because the woman outside the house referred only to two persons, a man and a woman, the officers were not justified in thinking that it was possible that other persons were in the house. However, the witness’s statement to police, referring to one man and one woman, did not preclude the possibility that there were other persons in the house. The officers arrived at the scene, promptly addressed the immediate situation at hand, and determined that in order to protect themselves and others they should search the home for other persons. Their actions must be considered according to their perceptions. *People v Cartwright*, 454 Mich 550, 559; 563 NW2d 208 (1997).

Apart from the protective sweep justification, officers had an additional basis to enter and conduct a warrantless search of defendant’s home. Pursuant to the exigent circumstances exception to the warrant requirement, police may enter a dwelling without a warrant 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. *Beuschlein, supra* at 749-750. The officers must further establish the existence of an actual emergency on the basis of specific and objective facts indicating that immediate action is necessary to prevent the imminent destruction of evidence, protect the officers or others, or prevent the escape of a suspect. *Id.*, at 749-750. If the police discover evidence of a crime following the entry without a warrant, that evidence may be admissible. *Cartwright, supra* at 559.

Given the information relayed to the officers via dispatch, the witness’s statement concerning what was occurring inside the house, and the hysterical screams the officers heard when they approached the side door, there was probable cause to believe that a crime was recently committed on the premises, and the premises contain evidence or perpetrators of the suspected crime. Once inside, officers were justified in conducting a limited search of the home because they reasonably deemed it necessary for the protection of themselves or others who might be in the home. *Beuschlein, supra* at 755-756. The serious nature of the report the officers were responding to, the discovery of a hysterical, partially unclothed woman, and the fact that the assailant was reported to be armed with a gun, yet defendant was unarmed, led the officers to reasonably believe that they and/or others in the house might very well be in danger. The record displays that the search was limited. Police engaged only in a cursory visual inspection looking for other assailants lying in wait or other victims who might be in need of aid. Accordingly, the entry and limited search of the residence was appropriate under the exigent circumstances exception to the warrant requirement. *Beuschlein, supra* at 755-756. Therefore,

the trial court erred in granting defendant's motion to suppress on the basis that no exception to the warrant requirement was applicable.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald
/s/ Pat M. Donofrio