

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIE R. GILLAM,

Defendant-Appellant.

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UNPUBLISHED

April 4, 2006

No. 259122

Ingham Circuit Court

LC No. 04-000633-FH

Before: Neff, P.J., and Saad and Bandstra, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's orders suppressing evidence and dismissing the case against defendant in its entirety. We affirm. This appeal is being decided without oral argument in accordance with MCR 7.214(E).

Undercover police officers purchased cocaine from a seller in Lansing, dealings with whom led them to identify defendant as her source. Police officers, some in uniform, then went to defendant's residence to arrest him. Defendant hesitated to leave his apartment because he was on a tether, but the police eventually coaxed him outside. Defendant then gave the police permission to retrieve his coat and shoes for him. In the course of doing so, an officer spotted and seized a slip of paper with an undercover officer's name and phone number on it.

Defendant was charged with two counts of possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), one count of possession with intent to deliver 50 grams or more but less than 450 grams of cocaine, MCL 333.7401(2)(a)(iii), and one count of conspiracy to deliver 50 grams or more but less than 450 grams of cocaine, *id.* and MCL 750.157a. Defendant moved to suppress the evidence discovered attendant to his arrest, and to dismiss one count. The court denied the motion to dismiss, but granted the motion to suppress.

Plaintiff did not seek leave to appeal the decision to suppress. Plaintiff did, however, move for an adjournment on the grounds that it was considering whether to appeal the suppression decision, and that "sufficient time does not exist to acquire and prepare sufficient replacement evidence." The trial court denied the motion. The next day, at what was to be the start of trial, the prosecutor cited the suppression decision, plus the failure to obtain a plea from a codefendant, and "respectfully decline[d] to proceed." Defense counsel then moved for dismissal of the whole cause, inducing the trial court to grant that motion, but "[w]ithout prejudice to the Prosecutor commencing the matter again."

On appeal, plaintiff challenges only the decision to suppress, not the decision to dismiss. Because the dismissal followed from plaintiff's inaction, but did not foreclose eventual trial of the cause, no abuse of discretion occurred in this regard. See *People v Adams*, 232 Mich App 128, 132; 591 NW2d 44 (1999) (setting forth the standard of review); US Const, Ams VI and XIV; Const 1963, art 1, sec 20; MCL 768.1 (setting forth constitutional and statutory guarantees of speedy trials).

But, should plaintiff accept the trial court's invitation to renew the prosecution, the question whether the prosecutor should have the benefit of the evidence seized when defendant was arrested is apt to arise again. In reviewing a trial court's decision following a suppression hearing, we review the trial court's factual findings for clear error, and review the legal conclusions de novo. See *People v Abraham*, 234 Mich App 640, 644; 599 NW2d 736 (1999).

The trial court suppressed the evidence in question not because it was seized without a search warrant, but because defendant was arrested in the first instance without an arrest warrant. The police do not generally need a warrant to arrest a person on probable cause that that person has committed a felony. *People v Johnson*, 431 Mich 683, 690-691; 431 NW2d 825 (1988), citing MCL 764.15. However, a warrant normally is required to arrest a suspect in his or her home. *Id.* at 691. See also US Const, Am IV; Const 1963, art 1, § 11. "[A]bsent a warrant, the fruits of an arrest of a suspect in his residence must be suppressed." *Johnson, supra* at 691, citing *Payton v New York*, 445 US 573, 586-588; 100 S Ct 1371; 63 L Ed 2d 639 (1980).

In this case, the trial court held that the police had probable cause to arrest defendant, and so should have obtained a warrant to arrest him in this instance, rather than appear without a warrant and pressure defendant to leave his residence.

"The purpose of the exclusionary rule is to deter police misconduct." *People v Goldston*, 470 Mich 523, 526; 682 NW2d 479 (2004). The relevant inquiry is into how the police behaved, not the suspect's subjective impressions. At issue in the instant case is whether the trial court had a reasonable evidentiary basis for concluding that the police actually coerced defendant to leave his place of residence and thus expose himself to unwarranted arrest.

At the suppression hearing, defendant testified that at the time in question he was confined to his apartment, on house arrest, with a tether. According to defendant, he observed uniformed police officers at his door, the police asked him to come outside, and he protested that he could not because of his tether. Asked if he eventually left his apartment, defendant replied, "Yes, I did, because there was an officer to my right. There was something about it that made me feel threatened. So I came on out and they arrested me." When the trial court asked how he came to be outside, defendant replied, "The officers kept telling me to come out of the house," and so he "ended up walking out," in an excited atmosphere.

Plaintiff argues that defendant did not describe any actual coercion, but that he left the apartment voluntarily. However, defendant did describe his reluctance to leave because of his tether. The trial court credited this testimony, and observed that defendant was in a position to understand the implications of breaking that tether. Defendant additionally described a pattern of repeated police entreaties to leave the apartment. Such persistence on the part of uniformed police officers in response to defendant's initial stated disinclination to leave the premises could reasonably be taken to constitute actual coercion.

For these reasons, we hold that the trial court did not clearly err in concluding that the police coerced defendant into leaving his apartment, and thus effectively arrested him at home without a warrant in violation of his constitutional rights. The trial court thus properly suppressed the evidence seized as the result of that arrest. *Johnson, supra* at 691. If plaintiff chooses to renew this prosecution, the prosecutor will be obliged to proceed without that evidence.

Affirmed.

/s/ Janet T. Neff  
/s/ Henry William Saad  
/s/ Richard A. Bandstra