

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HUBERT MARSHALL,

Defendant-Appellant.

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UNPUBLISHED

March 13, 2003

No. 235563

Wayne Circuit Court

LC No. 99-001336

Before: Gage, P.J., and Wilder and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions by a jury of two counts of assault with intent to do great bodily harm, MCL 750.84, and one count of possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to concurrent prison terms of fifty-seven months to twenty years for each assault conviction, to be preceded by a consecutive two-year term for the felony-firearm conviction. We affirm.

The prosecution's theory at trial was that defendant shot two police officers, Sergeants Melvin Williams and Michelle Lofton-Neal, with the intent of doing great bodily harm to them. Sergeant Williams testified that, during a police raid of a location, defendant pointed a gun at him and started firing, shooting him in the chest. Sergeant Lofton-Neal testified that she was hit by two bullets in the right shoulder during the raid. Defendant, however, indicated in his trial testimony that he began firing at the police officers because he did not realize that they were the police, but rather thought they were robbers and that one of them was about to shoot his son.<sup>1</sup>

Defendant argues that his convictions should be reversed because the police officers violated his constitutional protections against unreasonable searches and seizures by (1) entering the location of the incident without a search warrant, and (2) failing to knock and announce their presence.

In *People v Daniels*, 186 Mich App 77, 82; 463 NW2d 131 (1990), this Court stated:

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<sup>1</sup> Notably, Sergeant Williams testified that the officers were wearing vests that were marked "Detroit Police".

[W]e are convinced that the exclusionary rule does not act to bar the introduction of evidence of independent crimes directed at police officers as a reaction to an illegal arrest or search. Any other conclusion would effectively give a person who has been the victim of an illegal seizure the right to employ whatever means available, no matter how violent, to elude capture. [Citation omitted.]<sup>2</sup>

The charges in the present case are based on defendant shooting two police officers in reaction to their entry into his “club.” It is that entry that defendant claims violated his constitutional protection against unreasonable searches and seizures. Thus, assuming for purposes of discussion that the police entry constituted an illegal search in violation of defendant’s constitutional protections against unreasonable searches and seizures,<sup>3</sup> the exclusionary rule is nevertheless inapplicable in this case, which is predicated entirely on charges of independent crimes committed in reaction to the police entry.

Further, while defendant asserts that the police violated the “knock and announce” statute, MCL 780.656, suppression of evidence is not an available remedy for a violation of that statute. *People v Stevens (After Remand)*, 460 Mich 626, 644-645; 597 NW2d 53 (1999); see also *People v Vasquez (After Remand)*, 461 Mich 235, 241; 602 NW2d 376 (1999); *People v Hudson*, 465 Mich 929, 932; 639 NW2d 255 (2001). Thus, the apparent illegality of the police entry does not call for reversal of defendant’s convictions.

Affirmed.

/s/ Hilda R. Gage  
/s/ Kurtis T. Wilder  
/s/ Karen Fort Hood

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<sup>2</sup> Notably, although the prosecution appropriately relies on *Daniels* in its brief, defendant does not mention this controlling case in either his initial or reply brief. Defendant essentially relies on case law governing suppression of evidence related to illegal searches and seizures generally, without considering the rule applicable to the special circumstance of an independent crime being committed against a police officer in response to an illegal search or seizure.

<sup>3</sup> The prosecution acknowledges, for purposes of this appeal, that the police entry violated the constitutional protections against unreasonable searches and seizures.