STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED October 16, 2014
v	No. 320582 Ingham Circuit Court
JASON NICHOLAS TERRILL, Defendant-Appellee.	LC No. 13-000311-FH

Before: SAAD, P.J., and O'CONNELL and MURRAY, JJ.

PER CURIAM.

In this expedited interlocutory appeal, plaintiff argues that the trial court erred when it granted defendant's motion to suppress evidence. For the reasons stated below, we vacate the trial court's suppression order and remand for further proceedings.

I. FACTS AND PROCEDURAL HISTORY[1]

This case springs from a 911 call defendant made to the Ingham County Sherriff's Office, in which he reported a home invasion and shooting at his residence. Multiple police units arrived on the scene. According to a police sergeant, who testified at the motion hearing, the police were only aware that a shooting had taken place (and did not have information on potential suspects), and that the situation at defendant's home was "dynamic."

As officers cleared the exterior and driveway of defendant's property, defendant opened the door of his house and waved the officers inside. The police sergeant stated that defendant was "very frantic," appeared "very agitated," and kept saying "he's trying to get up." The police did not know if defendant was a victim or a suspect.

When the sergeant entered defendant's home, he saw a number of disturbing things. Multiple weapons, including a handgun and "numerous knives and daggers" were located

[1] Unless otherwise noted, all quotations in this section are from the testimony of a police sergeant who was the senior officer at the crime scene. The sergeant was the only witness who testified at the hearing on the motion to suppress.

throughout the room. "Ultra right wing" political items that were "consistent with possibly having [other] weapons in the residence" hung on the walls. Other individuals—including defendant's "very calm" girlfriend, and children—were present. And a handcuffed man lay in the doorway with "copious amounts of blood coming from his body."

The handcuffed man had bullet wounds "all over his body," and had suffered serious head trauma. A blood-stained baseball bat lay a short distance away from the man and the sergeant suspected that the bat had been used to bludgeon the handcuffed man after he had been handcuffed. Again, the police did not have further knowledge on the identity of the handcuffed man at this stage, nor did they know whether he was a victim or a suspect.[2]

In the face of this chaotic situation, the police began to secure the scene. The sergeant testified that their first task was to ensure that there were "no other actors, no other people with guns in that residence," so that the safety of the officers, children, and defendant and his girlfriend would not be compromised. Police removed the children and the handcuffed man to a safe location, and the sergeant called for backup.

After securing the "immediate scene," officers, with weapons drawn, began to clear the rest of the house, which was quite large. Near the back of the residence, police discovered a padlocked door that led to the basement. The sergeant smelled a strong odor of marijuana emanating from the basement, and was concerned that "other potential victims or suspects in the basement . . . could cause harm to either my staff or the residents of the house." He asked defendant to open the door so he could search the basement for people. Defendant refused, and the sergeant used a pair of bolt cutters to unlock the door.

No one else was in the basement, but the police did find an extensive marijuana growing operation and a cache of weapons. Though the police eventually received a search warrant for defendant's house—which encompassed "evidence of motive or intent [for the home invasion], including controlled substances"—they did not have a search warrant at the time they obtained the marijuana and firearms from the basement. The sergeant testified that he did not call for a search warrant before entering the basement because:

> Well, at that time I was concerned for the safety of my staff. We were met with a situation where there was someone that was handcuffed right inside the front door, which is unusual for us to see. We notice that there was a baseball bat near the victim that obviously had been used . . . in some fashion. It's highly unusual to see a suspect that was handcuffed that had obviously been shot and beat laying on the ground, and at that time we had no clue what was occurring in that house, and coupled with the fact that the propaganda on the walls, the other weapons that were hanging on the walls, it was highly unusual.

The prosecution subsequently charged defendant with, among other things, manufacturing marijuana in violation of MCL 333.7401(2)(d) and possessing a firearm in

[2] However, defendant made statements that the handcuffed man had broken into his house.

violation of MCL 750.224f. Defendant moved to suppress evidence of the marijuana and firearms the police found in the basement. The Ingham Circuit Court granted the motion, and held that the warrantless search of the basement was not part of a protective sweep, but rather a search for marijuana. The court refused to apply the inevitable discovery rule, but did not explain why it would not do so.

The prosecution made an interlocutory appeal of the trial court's decision to suppress the evidence, which our Court granted,[3] and argues that the evidence should be admitted under the: (1) exigent circumstances exception; and (2) inevitable discovery rule.

II. ANALYSIS

A. EXIGENT CIRCUMSTANCES EXCEPTION

Both the Michigan Constitution and the United States Constitution guarantee the right to be free from unreasonable searches and seizures. *Herring v United States*, 555 US 135, 136; 129 S Ct 695; 172 L Ed 2d 496 (2009); *People v Slaughter*, 489 Mich 302, 310–311; 803 NW2d 171 (2011).[4] As a general rule, a warrantless search is unreasonable unless there is both probable cause to believe that the search would uncover evidence of wrongdoing, and an exception to the warrant requirement. *People v Snider*, 239 Mich App 393, 407; 608 NW2d 502 (2000).

One exception to the warrant requirement is the existence of exigent circumstances. *People v Cartwright*, 454 Mich 550, 558; 563 NW2d 208 (1997). Under this exception,

> the 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. The police must further establish the existence of an actual emergency on the basis of specific and objective facts indicating that immediate action is necessary to (1) prevent the imminent destruction of evidence, (2) protect the police officers or others, or (3) prevent the escape of a suspect. If the police discover evidence of a crime following the entry without a warrant, that evidence may be admissible. [*In re Forfeiture of $176,598*, 443 Mich 261, 271; 505 NW2d 201 (1993).]

"[T]he validity of an entry for a protective search without a warrant depends on the reasonableness of the response, *as perceived by police*." *Cartwright*, 454 Mich at 559 (emphasis in original).

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[3] *People v Terrill*, unpublished order of the Court of Appeals, entered May 5, 2014 (Docket No. 320582).

[4] Unless there is a "compelling reason" to impose a different interpretation, the Michigan Constitution is to be construed to provide the same protection against unreasonable searches and seizures as the Fourth Amendment to the United States Constitution. *Slaughter*, 489 Mich at 311.

Here, the police had probable cause to believe defendant's home had recently been invaded and that the "premises contain[ed] evidence or perpetrators of the suspected crime." The extremely chaotic and confusing nature of the crime scene—defendant's agitated behavior; his girlfriend's unusually calm demeanor under the circumstances; the severely wounded and handcuffed man; the police's lack of knowledge on the identity of the perpetrator and the victims; and a house filled with knives, daggers, firearms, and "ultra right wing" political items—indicates that the police were faced with an "actual emergency," which, as the sergeant testified, required them to enter the basement to protect fellow police officers and others. The fact that marijuana was in the basement is quite beside the fact that other dangers might have lurked inside the basement.

Accordingly, the police have demonstrated that they had probable cause to search the basement, and that they were faced with an "actual emergency" when they did so. The evidence they obtained in the warrantless search of the basement is thus admissible, and the trial court's decision to the contrary is vacated.

B. INEVITABLE DISCOVERY RULE

In any event, were we to agree with the trial court, and hold that exigent circumstances were not present in this case, the marijuana and firearms obtained in the basement are nonetheless admissible because of the inevitable discovery rule.

"Generally, if evidence is unconstitutionally seized, it must be excluded from trial." *People v Hyde*, 285 Mich App 428, 439; 775 NW2d 833 (2009). However, evidence is not excluded if the connection between the illegal police conduct and the discovery and seizure of the evidence is "so attenuated as to dissipate the taint [of illegal police conduct]." *People v Frazier*, 478 Mich 231, 253; 733 NW2d 713 (2007). Accordingly, evidence is not suppressed if it would have been discovered regardless of unconstitutional conduct. *Hyde*, 285 Mich App at 439. In other words, if the prosecution can establish by a preponderance of the evidence that "items found would have ultimately been obtained in a constitutionally accepted manner," then the evidence can be admitted even if it was obtained in violation of the Fourth Amendment. *Id*. at 439–440.

"Three concerns arise in the inevitable discovery analysis: (1) whether the legal means [of discovery] are truly independent, (2) whether both use of the legal means and the discovery by that means are truly inevitable, (3) and whether the application of the inevitable discovery doctrine provides an incentive for police misconduct or significantly weakens Fourth Amendment protections." *Id*. at 440. When analyzing "the legal means [of discovery]"[5] (i.e., a search warrant), the "[t]he invalid portions of an affidavit [that serves as the basis for a search warrant] may be severed, and the validity of the resultant warrant tested by the information remaining in the affidavit." *People v Ulman*, 244 Mich App 500, 510; 625 NW2d 429 (2001).

[5] *Hyde*, 285 Mich App at 440.

Here, the police sergeant testified that he would have sought a search warrant absent his knowledge of defendant's marijuana production operation. The "untainted"[6] portions of the detective's affidavit that established probable cause for the search warrant stated that: (1) someone broke into defendant's house and was shot and handcuffed, (2) there was blood splatter and smears inside the residence, (3) the handcuffed man claimed he was present to steal TVs, (4) there were multiple weapons in the home, (5) the handcuffed man had been in multiple areas of the house, and (6) the vehicle in front of the house appeared to belong to the handcuffed man.

These facts provided "independent" means to search defendant's house, because they gave the police probable cause to believe that: (1) the crime of home invasion had been committed in defendant's house; and (2) the intruder was in defendant's house and had been in multiple rooms. Furthermore, if the police officers had entered the basement pursuant to this untainted search warrant, it is "truly inevitable" that they would have seen the marijuana plants and the firearms, which were not concealed. Because of the extremely unusual and chaotic circumstances of this crime scene, and because the police had legitimate reasons to request a search warrant because of the home invasion, we do not believe the application of the inevitable discovery rule to this search provides an incentive for police misconduct or significantly weakens Fourth Amendment protections.

The suppression order is vacated. We remand to the trial court for further proceedings consistent with this opinion, and we do not retain jurisdiction.

/s/ Henry William Saad
/s/ Peter D. O'Connell
/s/ Christopher M. Murray

[6] The only paragraph of the affidavit that addresses the marijuana found in defendant's basement actually suggested that the marijuana was legally possessed because defendant claimed to be a medical marijuana caregiver. Again, we note that the search warrant that eventually issued was not "tainted" in any way, because the warrantless search of the basement (and the evidence it produced) was justified under the exigent circumstances exception. In this section, however, we assume that the search warrant was "tainted" to demonstrate that, even in the absence of an exigent circumstance, the warrantless search of the basement was justified under the inevitable discovery rule.