

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

RICHARD VINCENT HALL,

Defendant-Appellee.

UNPUBLISHED

February 5, 1999

No. 207062

St. Clair Circuit Court

LC No. 97-001600 FH

Before: McDonald, P.J., and Jansen and Talbot, JJ.

PER CURIAM.

Defendant was charged with possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), conspiracy to possess with intent to deliver less than fifty grams of cocaine, MCL 750.157(a); MSA 28.154(1), possession of marihuana, MCL 333.7403(2)(d); MSA 14.15(7403)(2)(d), and with being an habitual offender, third offense, MCL 769.11; MSA 28.1083. Defendant moved to suppress the evidence on Fourth Amendment grounds. The trial court granted defendant's motion to suppress on the ground that the police conduct constituted a violation of the knock-and-announce statute, MCL 750.656; MSA 28.1259(6). Thereafter, the trial court entered an order dismissing the case without prejudice. The prosecutor appeals as of right. We reverse and remand.

On appeal, the prosecution argues that the trial court erred in granting defendant's motion to suppress where there was adequate justification for noncompliance with the knock-and-announce statute. Because we conclude that the trial court was operating under a misconception regarding the legal grounds necessary for suppression, we cannot review its decision without further findings.

In ruling on defendant's motion, the trial court relied on *People v Asher*, 203 Mich App 621; 513 NW2d 144 (1994), for the proposition that "the exclusionary rule applies to violations of the knock-and-announce statute." The trial court then suppressed the evidence solely on the basis of its finding that the police violated the knock-and-announce statute. Subsequently, this Court explained that suppression is not required for every violation of the knock-and-announce statute. See *People v Howard*, ___ Mich App ___, ___ NW2d ___ (Docket No. 201907, issued 12/4/98), slip op, p 4, citing *People v Polidori*, 190 Mich App 673; 476 NW2d 482 (1991). Instead, the remedy of

suppression is appropriate for violations of the knock-and-announce statute only where the police conduct is unreasonable by Fourth Amendment standards. *Howard, supra*, slip op, pp 4-5. Suppression is not warranted where the seizure of evidence flows from the lawful execution of a valid search warrant. *Id.* at slip op, p 5. Regarding the Fourth Amendment standard, the United States Supreme Court has explained that “[i]n order to justify a “no-knock” entry, the police must have a *reasonable suspicion* that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence.” *Richards v Wisconsin*, 520 US 385, ____; 117 S Ct 1416, 1421; 137 L Ed 2d 615 (1997) (emphasis added).

As noted, because the trial court suppressed the evidence on an improper basis, we are constrained to reverse and remand for further findings. On remand, the trial court shall have sixty days from the time of the entry of this opinion to decide defendant’s original motion to suppress on the basis of the proper legal standard (i.e., whether the police conduct was unreasonable by Fourth Amendment standards). The trial court’s decision shall contain findings of fact and conclusions of law. In its discretion, the trial court may take additional testimony or entertain additional arguments.

The trial court may make its decision on the record or in the form of a written opinion. If a hearing is held on remand, the trial court shall order preparation of the transcript to be filed within twenty-one days. If a written opinion is issued, the trial court shall file a copy of its opinion with the Court of Appeals within fourteen days of issuance.

Reversed and remanded. We retain jurisdiction.

/s/ Gary R. McDonald

/s/ Kathleen Jansen

/s/ Michael J. Talbot