

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EVAN ALLEN CLEMENT,

Defendant-Appellant.

UNPUBLISHED

February 8, 2000

No. 217626

Oakland Circuit Court

LC No. 97-154393-FH

Before: O'Connell, P.J., and Meter and T. J. Hicks*, JJ.

MEMORANDUM.

Defendant appeals by leave granted his plea based convictions for possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(v); MSA 14.25(7403)(2)(a)(v), and possession of marijuana, MCL 333.7403(2)(d); MSA 14.15(7403)(2)(d). He was sentenced to one year of probation under MCL 333.7411; MSA 14.15(7411). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the trial court erred in denying his motion to suppress evidence obtained as a result of a warrantless search of his parents' home. Police came to the home based on a neighbor's report of a potential breaking and entering. The officers observed that a screen was cut and a window was open when they arrived. Although the neighbor believed that the intruders had run away, she had not had a continuous view of them. The officers decided that it was necessary to enter the house to determine if any suspects were inside. Once inside, they observed drug paraphernalia in plain view. The items were seized, and they later tested positive for drug residue.

The Fourth Amendment of the United States Constitution guarantees the right of the people to be free from unreasonable searches by the government. The remedy for a violation of this right is the suppression of unlawfully obtained evidence. *People v Cartwright*, 454 Mich 550, 557-558; 563 NW2d 208 (1997).

* Circuit judge, sitting on the Court of Appeals by assignment.

Although a warrant is generally required before a home may be searched, police may lawfully enter a home without a warrant if exigent circumstances exist. *Id.* at 558. 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. *In re Forfeiture of \$176,598*, 443 Mich 261, 271; 505 NW2d 201 (1993). “The police must ... 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.” *Id.* (footnote omitted). If the police discover evidence of a crime after the warrantless entry, that evidence may be admissible. *Id.*

The trial court did not clearly err in finding that exigent circumstances existed that supported the warrantless search. *People v Houstina*, 216 Mich App 70, 73; 549 NW2d 11 (1996). Under the circumstances, the officers could have reasonably decided that it was necessary to enter the home to determine whether the breaking and entering suspects were present.

Affirmed.

/s/ Peter D. O’Connell
/s/ Patrick M. Meter
/s/ Timothy G. Hicks