

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

EDMUND HARRISON,

Defendant-Appellee.

UNPUBLISHED
December 1, 2000

No. 220061
Wayne Circuit Court
LC No. 99-001823

Before: Cavanagh, P.J., and Talbot and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's dismissal of charges against defendant. We reverse and remand for further proceedings.

Defendant was charged with carrying a concealed weapon (CCW) in violation of MCL 750.227; MSA 28.424. He moved to suppress the evidence, in particular the gun that was seized by police officers. Defendant claimed that the officers illegally entered his place of business and seized the gun. The trial court granted defendant's motion to suppress and then dismissed the charge.

The trial court's analysis of this matter was improper. The trial court found that defendant was conducting a business on the property and that he therefore had a right to have a gun on the property. Thus, the trial court ruled "[t]hat the officers, if they believed that there was some activity, should have gotten a search warrant, and were not justified in entering the property under the facts and circumstances" in this case. Therefore, the trial court granted the motion to suppress the gun and dismissed the charge.

Whether the seizure of the gun was proper is an inquiry separate from whether defendant was in violation of the CCW statute. When the inquiries are analyzed separately, it becomes apparent that the trial court erred in its analysis.

After reviewing the entire record, we conclude that the motion to suppress should not have been granted. Generally, a search conducted without a warrant is unreasonable unless there exists both probable cause and a circumstance establishing an exception to the warrant requirement. *People v Snider*, 239 Mich App 393, 407; 608 NW2d 502 (2000). One exception is where "exigent circumstances" exist. *Id.* Pursuant to the exigent circumstances exception,

“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.” *Id.* at 408, quoting *In re Forfeiture of \$176,598*, 443 Mich 261, 271; 505 NW2d 201 (1993). Furthermore, 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 police officers or others, or (3) prevent the escape of a suspect.” *Snider, supra*, quoting *In re Forfeiture of \$176,598, supra*. “Hot pursuit” is a form of exigent circumstances. *People v Raybon*, 125 Mich App 295, 301; 336 NW2d 782 (1983).

In our opinion, the officers’ entry into the building was reasonable. The officers had probable cause to believe that a crime was recently committed. The officers were dispatched to the scene to investigate a report of a man with a gun. At the scene one officer observed a gun sticking out of a bag that defendant was carrying. Generally, possession of a concealed weapon is illegal. See MCL 750.227; MSA 28.424. Upon seeing the officers, defendant entered the building. By observing defendant enter the building, the officers also had probable cause to believe that the building contained evidence or a perpetrator of the suspected crime. In our opinion, the officers’ minimal entry into the building would be justified for the protection of the police and others from an armed man who had been acting in a manner that prompted a call to the police. Moreover, the entry could be justified to prevent defendant from escaping. When defendant saw the officers, he walked “quickly” into the building. Therefore, it would be reasonable to conclude that defendant was attempting to escape from the officers. Because both officers were at the back of the building, in a fenced-in parking lot, it would have been difficult to surround and secure the building while a warrant was obtained. In essence, the evidence indicated that the officers were in “hot pursuit” of defendant and, under the circumstances, entry into the building and seizure of the gun was justified and reasonable.

In light of the above, the trial court’s disposition of the motion to suppress was erroneous. The officers’ entry into the building was reasonable and the seizure of the gun from defendant’s bag was lawful. Therefore, defendant’s motion to suppress should have been denied.

Further, the trial court’s determination that defendant was in lawful possession of the gun was premature. There was evidence to support a prima facie case that defendant was in possession of a concealed weapon. Therefore, defendant had the burden of producing some evidence exempting him from the statute. See *People v Henderson*, 391 Mich 612, 616; 218 NW2d 2 (1974). In the case at bar, defendant asserted that the building was his place of business. When some evidence relating to an exemption is presented, the burden of proof then shifts back to the prosecutor to establish beyond a reasonable doubt that defendant’s possession was not exempted from the statute. See CJI2d 11.11; see also *Henderson, supra*. In light of the fact that defendant merely offered a bare assertion that the building was his place of business, but was uncertain about the details of his business arrangement, and presented no objective evidence to support his claim, we are of the opinion that the issue remains an unresolved question of fact for a jury.

This Court reviews a trial court’s ruling regarding a motion to dismiss for an abuse of discretion. *People v Adams*, 232 Mich App 128, 132; 591 NW2d 44 (1998). In the case at bar,

because the seizure of the gun was not unreasonable, and the trial court's determination that defendant should be exempted from the application of the CCW statute was premature, there is no apparent basis on which to support the trial court's dismissal of the charge. Therefore, the trial court abused its discretion by dismissing the charge.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh

/s/ Michael J. Talbot

/s/ Patrick M. Meter