STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED October 2, 2001
v	No. 224593 Wayne Circuit Court
NOE FLORES, Defendant-Appellee.	LC No. 00-006077

Before: Gage, P.J., and Cavanagh and Wilder, JJ.

PER CURIAM.

The prosecutor appeals as of right from a circuit court order granting defendant's motion to suppress evidence and dismissing the charges without prejudice.[1] We reverse and remand for trial.

On June 5, 1999, at approximately 3:00 a.m., the Detroit Police Department's Narcotic Division executed a search warrant on defendant's residence, located at 7835 Senator Street in the city of Detroit. The warrant authorized the search at the residence for controlled substances (particularly cocaine, heroine, and marijuana), illegal guns, and proceeds obtained from illegal activity. As a result of the search, the police confiscated cocaine, marijuana, and $4,000 from defendant's residence.[2] It is undisputed that both the money and drugs were found after defendant admitted their presence in the home and directed the police officers to their location. Defendant was then charged with possession of more than 650 grams of cocaine with intent to deliver, MCL 333.7401(2)(a)(i), and possession of less then five kilograms of marijuana with intent to deliver, MCL 333.7401(2)(d)(iii).

[1] Although the December 7, 1999 transcript reveals that defendant moved for dismissal, the written order dismissing the case states that the case was dismissed pursuant to the court's motion.

[2] The cocaine, which weighed about twenty-five kilos was found in two boxes in the basement of the home, whereas the money was found in a kitchen cabinet. The record does not reveal where the marijuana was found; however, its presence in the home has not been challenged.

Prior to trial, defendant moved to suppress the evidence confiscated under the search warrant, arguing that the police did not comply with the tabulation statute, MCL 780.655,[3] and that the exclusionary rule required the evidence to be suppressed.[4] MCL 780.655 states in part:

> When an officer in the execution of a search warrant finds any property or seizes any of the other things for which a search warrant is allowed by this act, the officer, in the presence of the person from whose possession or premises the property or thing was taken, if present, or in the presence of at least 1 other person, shall make a complete and accurate tabulation of the property and things so seized. The officer taking property or other things under the warrant shall forthwith give to the person from whom or from whose premises the property was taken a copy of the warrant and shall give to the person a copy of the tabulation upon completion, or shall leave a copy of the warrant and tabulation at the place from which the property or thing was taken.

Following an evidentiary hearing, the trial court found that the police violated MCL 780.655 and that based on *People v Moten*, 233 Mich 169; 206 NW 506 (1925), *People v Sobczak-Obetts*, 238 Mich App 495; 606 NW2d 658 (2000), and *People v Tennon*, 70 Mich App 447; 245 NW2d 756 (1976), the evidence must be suppressed.

On appeal, the prosecutor argues that the statutory requirement to leave the search warrant and affidavit at the scene of the search are ministerial and that since these deficiencies had been remedied after charges were filed against defendant, the trial court erred when it suppressed the evidence. We agree.

A lower court's factual findings in a suppression hearing are reviewed for clear error and will be affirmed unless the reviewing court has a definite and firm conviction that a mistake has been made. *People v Custer*, 242 Mich App 59, 64; 618 NW2d 75 (2000), reversed, in part, on other grounds, ___ Mich ____; 630 NW2d 870 (2001). See also *People v Burrell*, 417 Mich 439, 448; 339 NW2d 403 (1983) and *People v Lombardo*, 216 Mich App 500, 504; 549 NW2d 596 (1996). However, with regard to the trial court's ultimate ruling on the suppression motion, our

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[3] According to defendant, the police failed to complete the tabulation sheet in the presence of himself or one of his family members and also neglected to leave a copy of the search warrant, affidavit, and tabulation sheet at the residence. Defendant also indicated that he was not provided with a copy of the warrant, affidavit, and tabulation until July 19, 1999, when it was faxed by the prosecutor to defense counsel.

[4] Defendant also moved to have the evidence suppressed based on the police officers' failure to "knock and announce" their presence. See MCL 780.656. However, the trial court found that pursuant to *People v Stevens*, 460 Mich 626; 597 NW2d 53 (1999), any alleged failure to knock and announce would not lead to the exclusion of evidence and denied the motion. Defendant also moved for suppression of the statements he made to the police as being violative of the Fifth Amendment. The trial court suppressed the statements defendant made at the home, but not the statements made at the police station. None of these rulings have been challenged on appeal by either party.

review is de novo. *Custer, supra*, citing *People v Garvin*, 235 Mich App 90, 96; 597 NW2d 194 (1999).

Here, the trial court suppressed the evidence against defendant, in part, by relying on this Court's opinion in *Sobczak-Obetts, supra*. However, since the trial court's decision in the case at bar, our Supreme Court has reversed this Court's decision in *Sobczak-Obetts*, holding that weapons seized pursuant to a federal search warrant were not properly excluded from evidence in a state prosecution on the grounds that a copy of the affidavit in support of the search warrant was not provided to the defendant at the time of the execution. 463 Mich 687, 689, 710; 625 NW2d 764 (2001). In finding that the weapons should not be excluded from evidence, the Court relied extensively on its decision in *People v Stevens*, 460 Mich 626; 597 NW2d 53 (1993), which held that where the discovery of the evidence was independent of the officers' failure to comply with the statutory "knock and announce" requirement, MCL 780.656 did not require exclusion of the evidence. The Court stated:

> As in *Stevens*, we now hold that suppression of the evidence seized in this case is not an appropriate remedy for the statutory violation at issue. Nothing in the language of § 5 provides any basis to infer that it was the legislators' intent that the drastic remedy of exclusion be applied to a violation of the statute. Furthermore, the exclusionary rule "'forbids the use of direct and indirect evidence acquired from governmental misconduct, such as evidence from an illegal police search.'" The requirements of § 5 are ministerial in nature, and do not in any way lead to the acquisition of evidence; rather, these requirements come into play only after evidence has been seized pursuant to a valid search warrant. Because the exclusionary rule pertains to evidence that has been illegally seized, it would not be reasonable to conclude that the Legislature intended to apply the rule to a violation of the postseizure, administrative requirements of § 5. Just as there was no causal relationship between the violation of the "knock and announce" statute and the seizing of the evidence in *Stevens*, there is in the instant case no causal relationship between the officers' failure to provide defendant with a copy of the search warrant affidavit and the seizure of the firearms. [*Sobczak-Obetts, supra* at 710, quoting in part, *Stevens, supra* at 636 and *People v Locicero (After Remand)*, 453 Mich 496, 508-509; 556 NW2d 498 (1996) (citations and emphasis omitted.)]

The Court further indicated that even if the evidence had been seized pursuant to a state search warrant, the exclusionary rule would not apply, see *id*. at 712, precisely the issue that is before us now. Here, defendant challenged the seized evidence on the grounds that the police officers failed to provide him with a copy of the affidavit, warrant, and return at the time of the execution. However, as in *Sobczak-Obetts*, defendant has not alleged that his constitutional rights were violated during the gathering of this evidence; instead, like the defendant in *Sobczak-Obetts*, defendant maintains that exclusion is proper because of the statutory violation. Because there is no claim that defendant's constitutional rights were violated during the search, and since the evidence seized from defendant's residence was not seized illegally, we find that the deterrent purpose of the exclusionary rule would not be served by ordering suppression of the evidence in

this case. See *id*. at 711. Consequently, we hold that the trial court erred in applying the exclusionary rule as a remedy for the statutory violation of MCL 780.655.

Reversed and remanded to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Hilda R. Gage
/s/ Mark J. Cavanagh
/s/ Kurtis T. Wilder