

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

RUBY QUICK,

Defendant-Appellee.

UNPUBLISHED

March 22, 2002

No. 235176

Oakland Circuit Court

LC No. 00-176024-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

LARRY QUICK,

Defendant-Appellee.

No. 235178

Oakland Circuit Court

LC No. 00-176025-FH

Before: Neff, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

In these consolidated appeals, the prosecutor appeals as of right the orders granting defendants' motions to suppress evidence and dismissing the charges of manufacturing marijuana, MCL 333.7401(2)(d)(iii), and possession of a firearm during the commission of a felony, MCL 750.227b. We reverse and remand.

The prosecution first argues that the trial court erred in relying exclusively on the preliminary examination transcripts in deciding defendants' motions to suppress evidence. We review de novo the trial court's interpretations of the law in deciding a motion to suppress. *People v Zahn*, 234 Mich App 438, 445; 594 NW2d 120 (1999).

As a general rule, the trial court may not rely solely on the preliminary examination transcripts in deciding a defendant's motion to suppress the evidence; however, opposing counsel may stipulate to have a motion to suppress decided exclusively on the basis of the preliminary transcripts. *People v Kaufman*, 457 Mich 266, 276; 577 NW2d 466 (1998). No such stipulation was made in this case. The prosecutor's arguments in response to defendants' motion

to suppress were based on the preliminary examination transcripts solely because defendants did not request an evidentiary hearing regarding the motion to suppress. Indeed, the prosecutor requested the court to hold a full evidentiary hearing if the court was not going to deny the motion. Thus, we conclude that the trial court erred by relying exclusively on the preliminary examination transcripts in deciding the motions to suppress evidence, and we remand for an evidentiary hearing regarding defendants' motions to suppress.

The prosecutor also argues that the trial court erred by granting defendants' motions to suppress because the officers' actions fell under the consent, emergency aid, or community caretaker exceptions to the warrant requirement. Because we are remanding for an evidentiary hearing regarding defendants' motions to suppress, we need not address this issue as the prosecutor may raise these exceptions to the search warrant requirement on remand.

Reversed and remanded for an evidentiary hearing on defendants' motions to suppress. Jurisdiction is not retained.

/s/ Janet T. Neff
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot