

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWARD BARTON HALL,

Defendant-Appellant.

UNPUBLISHED

June 15, 2004

No. 245892

Genesee Circuit Court

LC No. 02-010505-FH

Before: Neff, P.J., and Zahra and Murray, JJ.

MEMORANDUM.

Defendant appeals as of right his convictions of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv), possession of marijuana, MCL 333.7403(2)(d), and maintaining a drug house, MCL 333.7405(1)(d), entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant moved to suppress the evidence seized during a warrantless search of his motel room. Two police officers approached the door of defendant's room in order to investigate a possible assault. Defendant opened the door in response to the officers' knock, and from a vantage point at the door an officer observed a plastic bag of marijuana in plain view on a nightstand. The trial court denied the motion, finding that a number of exceptions to the search warrant requirement, in particular the plain view exception, applied under the circumstances.

We review a trial court's findings of fact on a motion to suppress for clear error, and review the ultimate decision de novo. *People v Darwich*, 226 Mich App 635, 637; 575 NW2d 44 (1997).

A police officer may seize an item in plain view if the officer is lawfully in a position to view the item and the item's incriminating character is immediately apparent. An item is obviously incriminatory if probable cause to seize the item exists without a search warrant. Exigent circumstances are not required for seizure of the item. *People v Champion*, 452 Mich 92, 101-102; 549 NW2d 849 (1996).

The warrantless seizure of the evidence from defendant's room was justified under the plain view exception to the search warrant requirement.¹ The officers were entitled to knock on the door of defendant's room and ask to speak with defendant. See *People v Frohriep*, 247 Mich App 692, 701; 637 NW2d 562 (2001). The officer was lawfully in a position to be able to view the plastic bag containing marijuana on the nightstand. Defendant contends that the officer could not have viewed the bag from his vantage point at the door; however, the trial court was entitled to resolve this issue of fact in the officer's favor. *People v Farrow*, 461 Mich 202, 208-209; 600 NW2d 634 (1999). The officers were justified in entering the room and seizing the evidence at that point, and were not required to obtain a search warrant prior to doing so. *Champion, supra*. The officers were entitled to search the room incident to their arrest of defendant, *id.*, 115, and were justified in seizing the other evidence, cocaine and drug paraphernalia. The trial court's decision was correct. *Darwich, supra*.

Affirmed.

/s/ Janet T. Neff
/s/ Brian K. Zahra
/s/ Christopher M. Murray

¹ In addition to arguing that the plain view exception to the warrant requirement is inapplicable, defendant also contends that the search was not justified under either the consent exception or the exigent circumstances exception. The trial court did not rely on either the consent exception or the exigent circumstances exception as a basis for its ruling; therefore, we decline to address the applicability of those exceptions to the facts of this case.