

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

RUBEN ALFREDO PAULA-ARROYO,

Defendant-Appellee.

UNPUBLISHED

November 22, 2005

No. 253002

Wayne Circuit Court

LC No. 03-008065

Before: Murphy, P.J., and Sawyer and Meter, JJ.

PER CURIAM.

The people appeal as of right from an order granting defendant's motion to suppress evidence and dismissing the case. We reverse and remand for reinstatement of the charges against defendant.

Defendant was charged with manufacture, sale, or possession of a short-barreled shotgun, MCL 750.224b, and possession of a firearm during the commission of a felony, MCL 750.227b. He moved to suppress the evidence on the ground that it was obtained as the result of an illegal search and seizure. At an evidentiary hearing, Officer Lane testified that he and his partner responded to a home to investigate a shooting. Ramon Vega, who appeared to be twelve or thirteen years old and who was extremely agitated, reported that he had shot Marissa Gonzales by accident. Officer Lane asked where the weapon used in the shooting was located, and after pursuing Vega to a room on the second floor of the residence, found a shotgun wrapped in a pillowcase inside a guitar case. Lane unloaded the shotgun and confiscated it. Vega testified that defendant rented a room in his home and that he understood that he was not to enter defendant's room. Vega acknowledged that he did not have permission to enter defendant's room or to open the guitar case.

The trial court granted defendant's motion to suppress the evidence and dismissed the case, finding that after Lane was shown the upper floor of the residence, no exigent circumstances existed, and he could have obtained a search warrant before entering defendant's room and searching for a weapon. In addition, the trial court found that no evidence showed that Vega voluntarily consented to the search of defendant's room.

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

Under the exigent circumstances exception to the search warrant requirement, a police officer may enter a dwelling without a warrant if he possesses probable cause to believe that a crime was recently committed on the premises and probable cause to believe that the premises contains evidence or perpetrators of the crime. The police must also 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 officers or others; or (3) prevent the escape of a suspect. If the police discover evidence of a crime following the entry without warrant, the evidence is admissible. *People v Snider*, 239 Mich App 393, 408; 608 NW2d 502 (2000).

The prosecutor argues that the trial court erred by granting defendant's motion to suppress evidence on the ground that no exigent circumstances existed that allowed Lane to look inside the guitar case and seize the shotgun.¹ We agree, reverse the trial court's decision, and remand this case for reinstatement of the charges against defendant. The reasonableness of the need for an entry without a warrant based on exigent circumstances is determined from the perspective of the police. *People v Cartwright*, 454 Mich 550, 559; 563 NW2d 208 (1997). Lane and his partner went to the residence to investigate a shooting. Lane indicated that when he entered the residence he saw several children and that Vega, who was extremely agitated, acknowledged that he shot Gonzales. Lane's testimony supported a finding that he pursued Vega up the stairs and into an open room in order to locate the weapon used in the shooting. The trial court clearly erred in finding to the contrary. *Darwich, supra*. Vega entered the room and indicated that the weapon was located in a guitar case. No evidence showed that Lane was informed that defendant controlled the room and the guitar case, or that Vega did not have permission to enter the room. However, the evidence showed that Lane perceived that a shooting had taken place and that the weapon used in the shooting was still on the premises. Lane indicated that he wanted to secure the weapon in order to protect his safety and the safety of everyone on the premises. *Cartwright, supra*. We conclude that under the circumstances, the trial court erred in suppressing the evidence on the ground that no exigent circumstances justified the search and seizure without a warrant. *Snider, supra*.

Reversed and remanded. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ David H. Sawyer

/s/ Patrick M. Meter

¹ The prosecutor does not challenge the trial court's ruling that Vega did not consent to the search of defendant's room or the guitar case.