STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JEREMY FISHER,

Defendant-Appellee.

UNPUBLISHED
March 25, 2008

No. 276439
Wayne Circuit Court
LC No. 04-000969

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

PER CURIAM.

In this prosecutor's appeal, plaintiff appeals by delayed leave granted from the circuit court's order granting defendant's motion to suppress evidence. We affirm. This case is being decided without oral argument in accordance with MCR 7.214(E).

Defendant was charged with assault with a dangerous weapon, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b, when a police officer opened the front door of a residence and defendant pointed a rifle at him. The charges were dismissed, however, when the trial court granted a motion to suppress the evidence of what the police observed in the house, on the ground that that evidence was the product of an unlawful search. Plaintiff appealed to this Court, which held that the trial court had erred in deciding the suppression motion without conducting a full evidentiary hearing. *People v Fisher*, unpublished opinion per curiam of the Court of Appeals, issued December 20, 2005 (Docket No. 256027). On remand, the trial court conducted an evidentiary hearing, then again granted the motion to suppress.

Evidence obtained in the course of a violation of a suspect's rights under the Fourth Amendment of the United States Constitution is subject to suppression at trial. *People v Cartwright*, 454 Mich 550, 557-558; 563 NW2d 208 (1997). See also Const 1963, art 1, § 11. In reviewing a trial court's decision following a suppression hearing, we review the trial court's factual findings for clear error, but review the legal conclusions de novo. See *People v Abraham*, 234 Mich App 640, 644; 599 NW2d 736 (1999).

Plaintiff maintains that the police were justified in conducting the warrantless search in question, insofar as they acted out of concern that someone inside the home might be in need of medical assistance. Plaintiff thus invokes the emergency-aid exception to the warrant requirement, whereby a police officer may enter a building to assist someone in need of immediate aid. *People v Davis*, 442 Mich 1, 25; 497 NW2d 910 (1993); *City of Troy v Ohlinger*, 438 Mich 477, 483-484; 475 NW2d 54 (1991). However, the scope of the permitted entry is governed by the emergency. *Id*. at 484. Accordingly, the police "may not do more than is reasonably necessary to determine whether a person is in need of assistance, and to provide that assistance." *Davis*, *supra* at 26.

At the evidentiary hearing, a police officer recounted that a pedestrian had complained to him and his partner of a man "going . . . crazy," and that at the location in question, the officer found defendant "walking around the residence screaming and throwing stuff." The officer added that the house had three "smashed out" windows, with broken glass still on the ground. According to the officer, as he approached the house, he observed some damaged fence posts, and a parked truck whose front was "smashed." The officer further testified that there was some apparently fresh blood on the hood of the truck, on some clothes inside the truck, and on the back door of the residence. According to the officer, defendant refused to answer a knock, then, when the police persisted and asked if he needed medical attention, answered with profanity. The officer described noticing a cut on defendant's hand. The officer explained that the police decided to enter the residence, because of indications that there was an injured person on the premises, and because they did not know if there was anyone else inside. The officer testified that he opened the front door, upon which defendant pointed a rifle at him.

On cross-examination, the officer admitted that he had not known whether defendant drove the truck at the scene, how the fence was damaged, or whether anyone in the house actually needed medical assistance. The officer further admitted that he observed no large quantity of blood in view, but rather mere drops.

The trial court concluded, "based on what I've heard here, I'm even more convinced" that the search in question was an improper entry, and thus that its duty was to suppress the evidence of the resulting gun-pointing incident. We agree.

Although there was evidence that there was an injured person on the premises, the mere drops of blood did not signal a likely serious, life-threatening injury. This is particularly so given that the police observed a cut on defendant's hand, which likely explained the trail of blood, but also that defendant was very much on his feet and apparently able to see to his own needs. Because "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed . . . ," *United States v United States Dist Court*, 407 US 297, 313; 92 S Ct 2125; 32 L Ed 2d 752 (1972), the trial court correctly recognized that the situation the police witness described in this case did not rise to a level of emergency justifying the warrantless intrusion into a residence.

Plaintiff alternatively argues that, even if the police officer acted unlawfully in forcing entry into the residence, the evidence of defendant's assaultive response was nonetheless admissible.[1] However, this argument was not raised below, and therefore is not preserved for appellate review. See *People v Carines*, 460 Mich 750, 767; 597 NW2d 130 (1999); *People v Grant*, 445 Mich 535; 520 NW2d 123 (1994). Moreover, an appeal by right following a remand is limited to issues arising from the remand. *People v Jones*, 394 Mich 434, 435-436; 231 NW2d 649 (1975). In this case, the scope of the remand was limited to obtaining a decision on the legality of the warrantless intrusion into the residence on a full evidentiary record. Because the proper opportunity to raise this alternative argument, even as an unpreserved issue, was in the first appeal, it is not properly before this Court in the second.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Brian K. Zahra

[1] See *People v Daniels*, 186 Mich App 77, 82; 463 NW2d 131 (1990) ("the exclusionary rule does not act to bar the introduction of evidence of independent crimes directed at police officers as a reaction to an illegal arrest or search" [dictum]). But see *People v Dillard*, 115 Mich App 640, 642; 321 NW2d 757 (1982) (a defendant who pointed a gun at a police officer in response to an illegal entry, but who neither fired the weapon nor otherwise caused any injury, acted reasonably and thus did not commit the crime of felonious assault).