

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JASMINE DORSEY,

Defendant-Appellee.

UNPUBLISHED

November 25, 2008

No. 280524

Wayne Circuit Court

LC No. 07-009874

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

PER CURIAM.

The prosecutor appeals as of right from the trial court order granting defendant's motion to suppress evidence found in her purse during the execution of a search warrant. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This Court is limited in its review to the lower court record. MCR 7.210(A)(1). Because the search warrant and affidavit in support of the search warrant were not part of the lower court record, this Court may not consider these documents and is unaware of the object of the search warrant. However, police testimony indicated that the "seller" described in the search warrant was a male, which plainly did not describe defendant.

Upon entry into a private home while executing a search warrant, police officers found defendant and two other women in the living room. While complying with the police order to freeze, defendant dropped her purse at her feet. An officer found an undisclosed amount of marijuana in the dining room while another officer searched defendant's purse and found an unloaded nine-millimeter gun. Testimony indicated that the police had no idea how long defendant had been at the home. Defendant was charged with carrying a concealed weapon, MCL 750.227. The trial court granted defendant's motion to suppress the gun and her subsequent motion to dismiss the charge.

The prosecution first argues that cases prohibiting the search of a person merely present on the premises where a search warrant is executed are distinguishable from the facts of this case where a personal effect, the purse, was searched. See *Ybarra v Illinois*, 444 US 85, 90-93, 96; 100 S Ct 338; 62 L Ed 2d 238 (1979); *People v Hawkins*, 163 Mich App 196, 198; 413 NW2d 704 (1987); *People v Burbank*, 137 Mich App 266, 269-270; 358 NW2d 348 (1984) (the search of a person found on premises subject to a search warrant must be supported by probable cause

particularized to that individual). The issue becomes whether defendant's purse can be considered an extension of her person.

In a similar case, but with relevant factual distinctions, involving the search of a purse belonging to a defendant who was present in a home covered by a search warrant, *People v Coleman*, 436 Mich 124; 461 NW2d 615 (1990), our Supreme Court found that the defendant's purse was not an extension of her person, and therefore was properly searched, because of several factors that are not present here: (1) the purse was found in a private area of the home, (2) the defendant was positioned in a place where it appeared she was concealing evidence, (3) the defendant appeared to have more control over the premises than a casual visitor, (4) the purse was several feet away from the defendant and not in her control, and (5) the facts showed that the defendant had a special relationship to the person named in the warrant. *Id.* at 133-136. By contrast, in this case: (1) the purse was found at defendant's feet where she dropped it upon being ordered to freeze by police; (2) defendant and the purse were in a common area of the home, near the entry; (3) there was no evidence that defendant had any knowledge of the marijuana found in the dining room; (4) there was no evidence suggesting that defendant had more control over the premises than a casual visitor; and (5) there was no evidence that defendant had a special relationship to the person or the home identified in the warrant. Because the facts here are clearly distinguishable from the facts in *Coleman*, we conclude that defendant's purse was an extension of her person and therefore improperly searched under the holdings in *Ybarra*, *Hawkins*, and *Burbank*, as well as *Coleman*.¹

The prosecutor next argues that the search of the purse was permissible as a *Terry* frisk of defendant's person. Under the holding in *Terry v Ohio*, 392 US 1, 27; 88 S Ct 1868; 20 L Ed 2d 889 (1968), an officer may conduct a reasonable search of a person where the officer has reason to believe he is dealing with an armed and dangerous individual. However, the prosecution has not presented any facts that would have justified a police officer's suspicion that defendant was armed and dangerous. She was merely present at a home that was the object of a search warrant. See *Ybarra*, *supra* at 92-93. Defendant also was in a central location within the home with no visible access to weapons, she had obeyed the police command to freeze, and the police had control of her purse and could have held it until the completion of their search. See *People v Stewart*, 166 Mich App 263; 420 NW2d 180 (1988).

The prosecutor has simply failed to create an evidentiary record that would persuade us that the circumstances surrounding the execution of the search warrant constituted a dangerous situation in which the police would be reasonably suspicious that anyone merely present in the home would be armed and dangerous. Despite our genuine concerns regarding officer safety in executing search warrants, *Coleman*, *Ybarra*, *Terry*, and the other cases cited herein mandate

¹ We, therefore, do not consider the prosecution's argument that the holding in *Wyoming v Houghton*, 526 US 295; 119 S Ct 1297; 143 L Ed 2d 408 (1999), should be extended to the facts of this case. We note, however, that because the search warrant was not made part of the lower court record, we cannot consider the object of the search permitted by the warrant attached to the prosecutor's appellate brief.

suppression on the record provided. Therefore, we find that the trial court did not err in its decision to suppress the evidence found in defendant's purse.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Michael R. Smolenski