

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

THOMAS EDWARD TOMLO,

Defendant-Appellee.

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UNPUBLISHED

February 17, 2004

No. 244500

Kalamazoo Circuit Court

LC No. 02-001753-FH

Before: Schuette, P.J., and Meter and Owens, JJ.

MEMORANDUM.

Plaintiff appeals as of right the trial court's decision granting defendant's motion to suppress evidence. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was arrested at his home and removed from the premises. Officers conducted a protective sweep of the home in an effort to account for defendant's roommate, whom defendant said was sleeping on the premises. The officers did not locate another person, but discovered several marijuana plants in plain view. Defendant was charged with manufacturing or possessing with intent to deliver marijuana, MCL 333.7401(2)(d)(iii). The trial court granted defendant's motion to suppress the evidence, finding that no legitimate reason existed for the officers to conduct the protective sweep.

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).

The exigent circumstances exception to the warrant requirement allows police to enter a dwelling if the officers possess probable cause to believe that a crime was recently committed on the premises, and probable cause to believe that the premises contain evidence or perpetrators of the suspected crime. The police must show the existence of an actual emergency on the basis of specific and objective facts which reveal the necessity for immediate action to: (1) prevent the imminent destruction of evidence; (2) protect the officers or others; or (3) prevent the escape of a suspect. *People v Snider*, 239 Mich App 393, 408; 608 NW2d 502 (2000).

A protective sweep is a quick, limited search of a premises, incident to an arrest and conducted to protect the safety of officers or others. It is confined to a cursory visual inspection of places in which a person might be hiding. *Maryland v Buie*, 494 US 325; 110 S Ct 1093; 108

L Ed 2d 276, 281 (1990). Police may, without probable cause or reasonable suspicion, look in closets and other spaces immediately adjoining the place of arrest from which an attack could be undertaken. *People v Shaw*, 188 Mich App 520, 524-525; 470 NW2d 90 (1991).

We reverse the trial court's decision and remand for reinstatement of the charge against defendant. The trial court erroneously applied an exigent circumstances analysis when it determined that the protective sweep was not warranted because the officers had no reasonable basis for fearing for their safety. The police did not enter defendant's home under emergency circumstances, but rather gained entry by consent. The protective sweep was conducted after defendant had been arrested and removed from the premises. The officers were not required to have probable cause or a reasonable suspicion in order to conduct a protective sweep. *Id.* The fact that the protective sweep was not conducted immediately after defendant's arrest does not negate the validity of the sweep. See *United States v Taylor*, 248 F3d 506, 513 (CA 6, 2001).

Reversed and remanded. We do not retain jurisdiction.

/s/ Bill Schuette

/s/ Patrick M. Meter

/s/ Donald S. Owens