

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JAMES W. EBERHARDT,

Defendant-Appellee.

UNPUBLISHED

June 3, 2004

No. 242903

Wayne Circuit Court

LC No. 01-011258

Before: Markey, P.J., and Wilder and Meter, JJ.

PER CURIAM.

The prosecutor appeals as of right from an order of dismissal entered after the circuit court granted defendant's motion to suppress evidence (a gun seized from defendant by police during a prostitution investigation). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews a trial court's factual findings at a suppression hearing for clear error, but reviews the ultimate ruling on a motion to suppress de novo. *People v Marcus Davis*, 250 Mich App 357, 362; 649 NW2d 94 (2002). The application of the exclusionary rule is a question of law that is reviewed de novo. *People v Custer*, 465 Mich 319, 326; 630 NW2d 870 (2001).

Under many circumstances, the police are authorized to arrest a person without a warrant if they have probable cause to believe that the person detained has committed or is committing a crime. MCL 764.15. Specifically, a police officer may arrest a person without a warrant if the officer has reasonable cause to believe a felony or a misdemeanor punishable by imprisonment for more than ninety-two days has been committed and reasonable cause to believe that the person committed it. MCL 764.15(1)(d). In this case, the police arrested defendant because they suspected him of having admitted a woman into his vehicle for purposes of prostitution. MCL 750.449. Assuming arguendo that the evidence was sufficient to create reasonable cause to believe defendant had committed that offense, the police could not arrest him without a warrant because at the time the offense was committed, it was only punishable by ninety days in jail. MCL 750.451.

The prosecutor suggests that even if the circumstances did not justify a warrantless arrest, they did justify an investigatory stop, pursuant to which the police could conduct a limited patdown search for weapons. The prosecutor suggests that the evidence was lawfully seized on this alternative basis. We disagree.

A police officer may briefly stop and detain a person to investigate possible criminal activity if he has a reasonable suspicion based on specific and articulable facts that the person detained has committed or is committing a crime. *People v Shankle*, 227 Mich App 690, 693; 577 NW2d 471 (1998). We agree that given the circumstances of the case, the police had a reasonable suspicion that defendant may have violated MCL 750.449 or a local ordinance corresponding thereto, and the officers therefore could have conducted an investigation before initiating an arrest. During that investigation, they could have secured defendant for safety reasons, *People v Green*, __ Mich App __; __ NW2d __ (2004), slip op at 2-3, and could have conducted a limited patdown search for weapons if they had a reasonable suspicion, based on specific and articulable facts, that defendant was armed. *Custer, supra* 328; *People v Nelson*, 443 Mich 626, 639; 505 NW2d 266 (1993). In this case, however, there is nothing in the record to suggest that the officers had any reason to believe that defendant was armed. In any event, the officers had already arrested defendant and were patting him down for weapons incident to the arrest. We are not aware of any authority holding that evidence seized incident to an unlawful arrest is admissible simply because other procedures, had they been followed, might have resulted in a lawful seizure of evidence.

Affirmed.

/s/ Jane E. Markey
/s/ Kurtis T. Wilder
/s/ Patrick M. Meter