

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

SEAN PATRICK DONOVAN,

Defendant-Appellee.

---

UNPUBLISHED

November 28, 2006

No. 263466

Wayne Circuit Court

LC No. 05-003381

Before: Cooper, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

The prosecution appeals by leave granted the trial court's order granting defendant's motion for dismissal.<sup>1</sup> We reverse and remand.

On appeal, the prosecution argues that, because defendant did not place a limit on the scope of his consent, it was reasonable for the police to follow defendant into the laundry room where he was seen flushing cocaine down a sink. At the outset, we note that the officers who conducted the search both testified at the preliminary examination that defendant consented to their entry into the home and gave them permission to search for the third party for whom the police had an arrest warrant. Because we conclude that the scope of a consent to search for a person includes the authority to move about the home, we hold that the officer could reasonably follow defendant to the laundry room and seize the contraband discovered in plain sight.

Generally, this Court reviews the trial court's factual findings on a motion to suppress evidence for clear error.<sup>2</sup> *People v Farrow*, 461 Mich 202, 208-209; 600 NW2d 634 (1999). However, it appears the trial court based its decision on the parties' recitation of the facts taken

---

<sup>1</sup> Defendant was charged, as a third habitual offender, MCL 769.11, with possession with intent to deliver between 50 and 449 grams of cocaine, MCL 333.7401(2)(a)(iii), and possession with intent to deliver methamphetamine/ecstasy, MCL 333.7401(2)(b)(i).

<sup>2</sup> We note that although defendant did not technically file a motion to suppress the evidence, defendant's motion to quash the evidence is the functional equivalent of a motion to suppress the evidence. See *People v Mordell*, 55 Mich App 462, 469; 223 NW2d 10 (1974) (treating a motion to quash the evidence as a motion to suppress the evidence). Further, the trial court's order indicated that defendant's motion was a motion to quash the evidence.

from the preliminary transcript.<sup>3</sup> “Therefore, the trial court was in no better position than this Court to assess the evidence, and there is no reason to give special deference to the trial court's ‘findings.’” *People v Zahn*, 234 Mich App 438, 445-446; 594 NW2d 120 (1999). This Court reviews de novo the trial court's conclusions of law and ultimate decision on a motion to suppress evidence. *People v Garvin*, 235 Mich App 90, 96-97; 597 NW2d 194 (1999).

Both the United States and Michigan Constitutions protect against unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11; *People v Bolduc*, 263 Mich App 430, 437; 688 NW2d 316 (2004). The lawfulness of a search or seizure depends upon its reasonableness. *People v Beuschlein*, 245 Mich App 744, 749; 630 NW2d 921 (2001). Generally, searches without a warrant are unreasonable per se absent an exception to this requirement. *People v Borchard-Ruhland*, 460 Mich 278, 293-294; 597 NW2d 1 (1999). One such exception is consent, the scope of which is determined by objective reasonableness, i.e., what a reasonable person would expect depending upon the exchange between the police and suspect. *Id.* at 294, citing *Schneckloth v Bustamonte*, 412 US 218, 219; 93 S Ct 2041; 36 L Ed 2d 854 (1973).

Regarding the scope of defendant's consent to search the house for the third party, the police conduct was proper.<sup>4</sup> Both police officers that searched the house testified at the preliminary examination that defendant granted them consent to search the house for the third party. Thus, even though state trooper Gabriel Covey indicated that he followed defendant through the kitchen and into the laundry room for his own safety, in light of the consent to search for an individual, a reasonable person would expect that the police would move about the house. Therefore, on the basis of this consent, the police actions were objectively reasonable and did not constitute an unreasonable search. *People v Frohriep*, 247 Mich App 692, 703; 637 NW2d 562 (2001). Furthermore, because the police were lawfully in the laundry room pursuant to defendant's consent, the officers could legally seize the contraband observed in plain view. See *People v Champion*, 452 Mich 92, 101; 549 NW2d 849 (1996) (“The plain view doctrine allows police officers to seize, without a warrant, items in plain view if the officers are lawfully in a position from which they view the item, and if the item's incriminating character is immediately apparent.”).

Consequently, the trial court erred when it suppressed the evidence and dismissed the case against defendant.

---

<sup>3</sup> During the docket conference, defense counsel referred the trial court to the preliminary examination transcript on several occasions and the prosecution also admitted that defense counsel's recitation of the facts was based on the preliminary examination.

<sup>4</sup> We note that although the police indicated at the preliminary examination that defendant consented to the search for the third party, neither the prosecution nor defense counsel disclosed this fact to the trial court at the docket conference.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jessica R. Cooper

/s/ Joel P. Hoekstra

/s/ Michael R. Smolenski