

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
June 23, 2011

v

LATANIA LYNN TAYLOR,

Defendant-Appellant.

No. 296901
Saginaw Circuit Court
LC No. 08-031359-FH

Before: WHITBECK, P.J., and MARKEY and K. F. KELLY, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted her plea-based conviction of possession with intent to deliver 50 grams or more but less than 450 grams of cocaine, MCL 333.7401 (2)(a)(iii), for which she was sentenced as a third habitual offender, MCL 769.11, to 51 months to 40 years in prison. Specifically, defendant challenges the trial court's denial of her motion to suppress the evidence. We affirm.

The police responded to a 911 call regarding a domestic disturbance at defendant's apartment, which involved defendant's friend and the friend's wife. A detective informed the officers that he had information regarding drug trafficking in defendant's apartment. After the officers left the scene, they discovered that defendant had an outstanding arrest warrant for misdemeanor traffic violations. The officers returned to defendant's apartment and arrested defendant. An officer conducted a protective sweep of the apartment to determine whether anyone else was in the apartment who would pose a danger to the officers or defendant. The officer observed what appeared to marijuana on the floor under defendant's bed. A search warrant was obtained and cocaine, marijuana, and a scale were seized from the apartment.

Defendant moved to suppress the evidence, arguing that the police exceeded the scope of a protective sweep by looking under her bed (which was low to the floor and could not accommodate a person under it); therefore, the subsequent warrant was without basis and the evidence discovered pursuant to the search was the fruit of the poisonous tree. The trial court denied the motion, finding that the information regarding drug trafficking justified the protective sweep following defendant's arrest. The trial court also found that the officer was justified in looking under defendant's bed during the course of the protective sweep.

Defendant argues that the search of her apartment incident to her arrest violated her constitutional right to be free of unreasonable search and seizures; therefore, the evidence that resulted from the subsequent search should have been suppressed. We disagree.

“We review de novo a trial court’s ultimate decision on a motion to suppress. However, the trial court’s underlying findings of fact are reviewed for clear error.” *People v Beuschlein*, 245 Mich App 744, 748; 630 NW2d 921 (2001). “A finding is clearly erroneous when it leaves this Court with a definite and firm conviction that the trial court made a mistake.” *People v Waclawski*, 286 Mich App 634, 693; 780 NW2d 321 (2009).

The United States and Michigan Constitutions both guarantee the right against unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11. “As a general rule, searches conducted without a warrant are per se unreasonable under the Fourth Amendment unless the police conduct falls under one of the established exceptions to the warrant requirement.” *Beuschlein*, 245 Mich App at 749. One such established exception is “a properly limited protective sweep in connection with an in-home arrest if the police reasonably believe that the area in question harbors an individual who poses a danger to them or to others.” *Id.* at 757, citing *Maryland v Buie*, 494 US 325, 337; 110 S Ct 1093; 108 L Ed 2d 276 (1990). Officers are allowed to conduct a quick and limited search of the premises, incident to an arrest, to protect themselves or others. *Buie*, 494 US at 327. This search is narrowly confined to a cursory visual inspection of places in which a person might be hiding. *Id.*

The court correctly denied defendant’s motion to suppress. Defendant consented to the protective sweep of her apartment. Moreover, the police had information regarding drug trafficking in defendant’s apartment. Effectuating an arrest in an apartment known for drug trafficking is an articulable fact that is sufficient to have given the officers a reasonable belief that the apartment “harbor[ed] an individual who pose[d] a danger to them or to others.” *Beuschlein*, 245 Mich App at 757. Further, the officers did not know whether defendant’s friend was still on the premises. Defendant told the officers that no one else was in the apartment, but this fact does not determine whether the protective sweep was justified. The reasonableness of a protective sweep is viewed from the perspective of the police officers. *People v Cartwright*, 454 Mich 550, 559; 563 NW2d 208 (1997).

Because the protective sweep of defendant’s apartment was reasonable when viewed from the perspective of the police officers, and therefore constitutional, the observation of contraband during the protective sweep properly supported probable cause to issue the subsequent search warrant. See *Beuschlein*, 245 Mich App at 757-758. The trial court correctly denied defendant’s motion to suppress.

We affirm.

/s/ William C. Whitbeck
/s/ Jane E. Markey
/s/ Kirsten Frank Kelly