

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MICHAEL BERRY and MICHAEL ABERNATHY,

Defendants-Appellees.

UNPUBLISHED

March 24, 1998

No. 197003

Recorder's Court

LC No. 96-003419

Before: Holbrook, Jr., P.J., and Michael J. Kelly and Gribbs, JJ.

MEMORANDUM.

The Wayne County Prosecutor appeals by right from a Recorder's Court order, granting defendants' motions to suppress evidence on Fourth Amendment grounds in this prosecution for possession with intent to deliver cocaine and heroin. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Based on our review of the record, probable cause existed to justify the police officer's search and arrest of defendants. See *People v Potter*, 115 Mich App 125, 134-135; 320 NW2d 313 (1982).

In their suppression motions below, defendants argued that their Fourth Amendment rights were violated where no connection was established between them and the contraband seized from the vacant house from which the alleged drug transactions occurred.¹ Before a defendant in a criminal case may invoke the exclusionary rule of the Fourth Amendment, the defendant must first establish that he has standing to present a Fourth Amendment challenge. *People v Smith*, 420 Mich 1, 17-18; 360 NW2d 841 (1984). The burden of proving standing is on the defendant. *People v Lombardo*, 216 Mich App 500, 504; 549 NW2d 596 (1996). To establish standing, the defendant must demonstrate that, under the totality of the circumstances, he had a legitimate expectation of privacy in the area or object searched, and this expectation of privacy must have been one that society accepts as reasonable. *Smith, supra* at 28.

Here, the only evidence concerning the premises where the search and seizure occurred was that it was a vacant dwelling. Neither defendant adduced any evidence to suggest that they had

authority to occupy those premises. Accordingly, both defendants lacked the requisite standing to seek suppression of the evidence on Fourth Amendment grounds. *United States v Dodds*, 946 F2d 726, 727-728 (CA 10, 1991).

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

/s/ Donald E. Holbrook, Jr.

/s/ Michael J. Kelly

/s/ Roman S. Gibbs

¹ Defendants argue that, because they were arrested outside the dwelling, there is no nexus between them and the contraband seized from the house. However, the surveillance officers testified that, at the time of the alleged drug transactions, the defendants were *inside* the dwelling. Thus, contrary to defendants' argument, standing is a relevant issue.