

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JONATHON WAYNE LOVE,

Defendant-Appellant.

UNPUBLISHED
December 9, 2004

No. 249214
St. Joseph Circuit Court
LC No. 02-011207-FH

Before: Markey, P.J., and Fitzgerald and Owens, JJ.

PER CURIAM.

Defendant appeals as of right from jury convictions of possession of methamphetamines, MCL 333.7403(2)(b)(i), and possession of marijuana, MCL 333.7403(2)(d), for which he was sentenced as an habitual offender, second offense, MCL 769.10, to two years' probation with the first nine months in jail. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first contends that the trial court erred in admitting the methamphetamines into evidence because the prosecutor failed to establish a proper chain of custody. To preserve an evidentiary ruling for appeal, the defendant must raise a timely and specific objection in the trial court. MRE 103(a)(1); *People v Parker*, 230 Mich App 677, 687; 584 NW2d 753 (1998). Not only did defendant fail to raise a timely objection when the prosecutor moved for the admission of the drug into evidence, he waived any claim of error by stating that he had no objection to its admission. *People v Lueth*, 253 Mich App 670, 688; 660 NW2d 322 (2002); *People v Tate*, 244 Mich App 553, 559; 624 NW2d 524 (2001).

Defendant next contends that he is entitled to a new trial because Judge Noecker may not have been fair and impartial and should have been disqualified. Defendant failed to preserve this issue by moving for disqualification below. *People v Mixon*, 170 Mich App 508, 514; 429 NW2d 197 (1988), rev'd in part on other grounds 433 Mich 852 (1989). Because defendant failed to preserve this issue, review is precluded unless the defendant demonstrates plain error that affected the outcome of the lower court proceedings. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Defendant has not shown any bases for disqualification under the applicable court rule, MCR 2.003(B), or on due process grounds. See *Cain v Dep't of Corrections*, 451 Mich 470, 497-498; 548 NW2d 210 (1996). He contends that the trial judge may have been drunk at the

time he presided over the trial or while working on the opinion on defendant's motion to dismiss. There is nothing in the record to suggest that such is the case and the evidence on which defendant relies is not part of the lower court record and cannot be considered here. Appeals are heard on the original record, MCR 7.210(A)(1), and it is impermissible to expand the record on appeal. *People v Powell*, 235 Mich App 557, 561 n 4; 599 NW2d 499 (1999). That aside, defendant has not identified any intemperate remarks or other misconduct of the judge during the trial itself and, regardless of the judge's alleged drinking habits, it is clear from his ruling on the motion to dismiss, as stated on the record and in his subsequent written opinion, that he was aware of the issue to be determined and correctly applied the law in deciding the issue. Therefore, defendant has not shown a right to relief. *Carines, supra*.

Affirmed.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens