STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED February 12, 2009
v	No. 279574 Wayne Circuit Court
RUFUS CORNELL THOMAS, Defendant-Appellee.	LC No. 07-007938-01

Before: Gleicher, P.J., and K.F. Kelly and Murray, JJ.

PER CURIAM.

Defendant was charged, as a third habitual offender, MCL 769.11, with felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant filed a motion to suppress, which the trial court granted. The prosecution appeals as of right. We reverse.

I. Basic Facts

On an evening in April 2007, two police officers were on routine patrol in the City of Detroit. Sometime between 10:00 p.m. and 10:30 p.m., the officers noticed a number of juveniles between the ages of 12 and 16 coming in and out of a large brick building from which loud music was emanating. None of the juveniles observed were accompanied by adults. The building spanned a city block, had no windows, had several addresses, and had a yellow awning that read "Rufus Records." Concerned that there was a "party going on" involving juveniles after curfew,[1] the officers called Sergeant Ron Gibson to the scene, whose responsibility it was to inspect businesses, rental and public dance halls, as well as after-hours locations, under the authority of certain city ordinances.

Once Gibson arrived at the scene, all three went to the building's door and Gibson knocked. No one answered for several minutes, at which point the two officers went around the building's sides to ensure that nobody was leaving through back entrances. While the two officers were gone, Erick Traylor opened the door and admitted Gibson, who had unholstered his

[1] Detroit City Code, § 33-3-1 prohibits minors ages 15 and under from being on public streets or other unsupervised places from 10:00 p.m. to 6:00 a.m. (during daylight saving).

gun. Traylor testified that Gibson "barged" his way into the building once Traylor opened the door. Gibson told Traylor that he was there for a business inspection and Traylor indicated that he was hosting the event, which was a dance party for children in the "Detroit 203 Youth Education and Sports Program" that had been advertised. In the meantime, the other two officers returned and also entered the building. Inside, the officers observed 40 children ranging from the ages of 5 to 16 in a dance area with flashing lights, a ball spinning from the ceiling, and music playing from a DJ booth. Gibson began the inspection of the building and he spoke with defendant, who was the DJ at the event. Near the DJ booth were alcohol and an assault rifle. Defendant indicated to Gibson that he did not have a business or rental hall license.

Defendant was arrested and charged with felon in possession and felony-firearm in connection with these events. Subsequently, defendant filed a motion to suppress the firearm, arguing that warrantless search and seizure of the gun from defendant's property was in violation of the U.S. and Michigan Constitutions. See US Const, Am IV; Const 1963, art 1, § 11. At the motion hearing, the trial court agreed with defendant and suppressed the evidence. This appeal followed.

II. Standard of Review

"A trial court's findings of fact in a suppression hearing are reviewed for clear error; but its ultimate decision on a motion to suppress is reviewed de novo." *People v Dunbar*, 264 Mich App 240, 243; 690 NW2d 476 (2004).

III. Analysis

The prosecution argues that the police properly searched the premises and seized defendant's firearm pursuant to Detroit city ordinances permitting the inspection of licensed public dance and rental halls. We agree.

Detroit's general license provision requires that businesses subject to regulation be open to inspection during operating hours "for the purpose of enforcing any laws of the state or any ordinances or regulations of the city relating to the public health, safety or welfare." Detroit City Code, § 30-1-15.[2] Regarding the inspection of "public dance halls," Detroit City Code, § 5-13-2,[3] permits police to enter public dance halls at "reasonable times" subject to Fourth Amendment

[2] Section 30-1-15 provides:

> Every establishment which is ostensibly being operated as a business which is subject to regulation under this Code shall be open for inspection by duly authorized representatives of any city department concerned with the licensing or supervising of such establishment during operating hours for the purpose of enforcing any laws of the state or any ordinances or regulations of the city relating to the public health, safety or welfare.

[3] Section 5-13-2 provides:

(continued…)

restrictions. Similarly, Detroit City Code, §§ 46-1-2 and 46-1-4 requires licenses for "rental halls" to host a dance or ball and require such establishments to be open upon demand for police inspection.[4] As indicated, under these ordinances law enforcement does not have unfettered access to search such venues. Rather, any search and seizure must be consistent with constitutional requirements of the Fourth Amendment of the U.S. Constitution and art 1, § 11 of the Michigan Constitution, which afford the same protection against unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11; see also *People v Smith*, 420 Mich 1, 27; 360 NW2d 841 (1984). Accordingly, in order to determine whether a search was appropriate under these ordinances, we must consider whether it comported with both the requirements of the relevant ordinances and the Fourth Amendment.

In the present matter, it is plain that the officers' actions were consistent with the city ordinances. The city ordinances permit authorized personal, including members of the police department, to enter "rental halls" or "public dance halls" for an inspection at "a reasonable time" or "during operating hours." The officers saw juveniles entering and exiting a large commercial building from which loud dance music was emanating. Subsequently, the police entered the premises while the dance was still going on. It was reasonable to enter the building during operating hours to conduct an inspection pursuant to the ordinances. Accordingly, the officers' conduct complied with the ordinances.

(…continued)

> For the purpose of ensuring compliance with this article, members of the Police Department or any City department that is authorized by this article may enter the premises at reasonable times to inspect, subject to constitutional restrictions on unreasonable searches and seizures. If entry is refused, or not obtained, the, City is authorized to pursue recourse as provided by law.

Section 5-13-1 defines "public dance hall," in relevant part, as a building "that is used for dances where the public is invited or allowed and a monetary contribution, donation, or fee is made or paid including any establishment operating a commercial venture offering dance to the public where alcoholic beverages are not sold, served, possessed, or consumed." In addition, § 5-13-21 requires the operator of a public dance hall to obtain a license.

[4] Detroit City Code, § 46-1-1, defines "rental hall," in relevant part, as any building "regularly available for rental, lease or loan for the purpose of public assembly . . . [and] entertainments . . . whether or not such public assemblies are public or private or an admission fee is charged." Section 46-1-2 provides:

> Each licensee under this chapter shall, upon demand, open all portions of the licensed premises for inspection by the department of police or other city departments for the purpose of enforcing any of the provisions of this chapter or other provisions of this Code or other ordinances relating to the health, safety and welfare of the public.

Further, § 46-1-4 states: "Licensees under this chapter shall prohibit any dance or ball unless a license has been obtained by the person sponsoring or conducting such dance or ball in compliance with this Code and other ordinances of the city."

Defendant argues that the ordinances do not apply because the operation cannot be defined as a "rental hall" or "public dance hall" since no evidence was presented showing that the premises was regularly rented or that a fee was charged upon entry. We find this argument to be without merit. The police conduct at issue was objectively reasonable based on the facts observed by the individual officers and we may not invalidate it on the basis of ad hoc knowledge. *People v Oliver*, 464 Mich 184, 200; 627 NW2d 297 (2001).

We are also of the view that the officers' actions were constitutionally sound. "The lawfulness of a search or seizure depends on its reasonableness." *People v Beuschlein*, 245 Mich App 744, 749; 630 NW2d 921 (2001). To determine whether a person has a protected privacy interest, we must determine whether that person has a reasonable expectation of privacy in the place searched or object seized and whether that interest is one that society is willing to recognize as reasonable. *People v Powell*, 235 Mich App 557, 560; 599 NW2d 499 (1999). Generally, when a person does have a reasonable expectation of privacy, a warrant is required before any search or seizure may be conducted unless an exception to the warrant requirement applies. *People v Borchard-Ruhland*, 460 Mich 278, 293-294; 597 NW2d 1 (1999). This Court has previously held that entry into a commercial place open to the public does not violate an individual's reasonable expectation of privacy and, thus, does not violate constitutional guarantees against unreasonable searches. *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 23; 672 NW2d 351 (2003). Further, an officer may seize items in plain view if that officer is lawfully in a place to have that view and the object viewed is obviously incriminatory. *People v Galloway*, 259 Mich App 634, 639; 675 NW2d 883 (2003), lv den 470 Mich 890 (2004).

In this case, the officers sought entry into a commercial building where they suspected a dance was under way. Traylor, the individual in charge of the event, testified that the dance had been advertised to school-aged children. Traylor also indicated that he could not keep track of the comings and goings of the children because the program involved over 360 children, and that he anticipated that the children's parents would come to pick them up that evening. Traylor also indicated that he opened the door when Gibson knocked because he believed Gibson might be a parent knocking. In light of these facts, the premises was similar to a commercial building open to the public and, therefore, the officers' entry onto the premises did not violate defendant's expectation of privacy. *Peterson Novelties, Inc*, *supra* at 23. In other words, defendant had no reasonable expectation of privacy in the building.[5] Further, upon entry, defendant's assault rifle was in plain view. Accordingly, the rifle was properly seized because the officers were lawfully on the premises and the assault rifle was readily visible. *Galloway*, *supra* at 639. We conclude, therefore, that defendant's constitutional rights were not violated when the officers entered the building and seized the assault rifle.

[5] We note that our conclusion agrees with the prosecution's argument, raised for the first time on appeal, that defendant lacked standing to challenge the search and seizure because he had no reasonable expectation of privacy in the premises. Although we may decline to consider an argument not raised before the trial court, we may nevertheless consider it if it concerns a constitutional matter, as is the case here. See *People v Krause*, 206 Mich App 421, 424; 522 NW2d 667 (1994).

The prosecution also argued that the "pervasively regulated industry" exception permits admission of the assault rifle. In light of our conclusion that the search and seizure was lawfully conducted, we find resolution of this issue to be unnecessary.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ Christopher M. Murray