ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
TERRY CRABTREE, JUDGE

DIVISION I

CACR 06-182

November 29, 2006

RONALD EUGENE BROWN

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

APPEAL FROM THE CIRCUIT COURT OF BRADLEY COUNTY
[NO. CR-2004-93-1]

HONORABLE SAMUEL B. POPE, JUDGE

AFFIRMED

The appellant, Ronald Eugene Brown, was found guilty by a jury of possessing cocaine with intent to deliver for which he was sentenced as an habitual offender to a term of twenty years in prison. Appellant's only issue on appeal is that the trial court erred in denying his motion to suppress. We affirm, but for a different reason than that which was found by the trial court.

Our review of the record discloses that on September 24, 2004, officers working in concert with the Hermitage Police Department executed a search warrant at the residence of Shenetta Simmons at apartment C-28 in the Hermitage Apartments. Five or six persons, including appellant and Ms. Simmons, were inside the apartment when the officers entered.

The officers secured the residence by placing everyone on the floor. As this was being accomplished, a plastic baggie was seen sliding across the floor, having come from the direction of the appellant. This baggie contained what proved to be a single rock of cocaine weighing 7.2113 grams. Aside from $207 in currency, no other contraband was seized in the search. Appellant was charged with possession of the cocaine with intent to deliver, based on the seizure of the cocaine.

Prior to trial, appellant moved to suppress this evidence. He contended that the search warrant was invalid because the affidavit failed to contain sufficient information to establish the reliability of the confidential informant. The affidavit, prepared by Officer Chance Dodson, recited:

> Over the past couple of weeks, the Hermitage Police Department has obtained information that Ronald (Cave-Man) Brown has been selling crack cocaine from apartment C-28 at the Hermitage Apartment Complex. This led the department to have a confidential informant meet at a prearranged location where he/she was searched and no drugs was found on the informant. He/She was then given department issued buy money. The C.I. was then observed by myself enter the apartment (C-28). The C.I. then purchased, what appeared to be crack cocaine from Ronald Brown for $30. The C.I. then returned to a prearranged location where he/she handed me that evidence that was purchased. The evidence was then packaged for deliver to the Arkansas State Crime Lab for Analysis. The control buy took place within the last seventy-two hours.

The trial court denied the motion to suppress after considering the testimony of Officer Dodson, the only witness at the hearing. The court ruled that the informant's participation in the drug-buy established the reliability of the informant and provided reasonable cause for the

issuance of the warrant. Appellant challenges the trial court's decision in this appeal. In his argument, appellant notes that the decision in *Langford v. State,* 332 Ark. 54, 962 S.W.2d 358 (1998), is, arguably, supportive of the trial court's decision, but he maintains that *Langford* is distinguishable in several material respects. We do not reach the merits of appellant's argument, however, because the record affirmatively demonstrates that he has no standing to contest the search.

The protection of the Fourth Amendment guarantees the right of people to be secure against unreasonable searches and seizures. *Rankin v. State,* 57 Ark. App. 125, 942 S.W.2d 867 (1997). Rights secured by the Fourth Amendment are personal in nature and may not be vicariously asserted. *Rakas v. Illinois,* 439 U.S. 128 (1978). Accordingly, a defendant must have standing before he can challenge a search on Fourth Amendment grounds. *Embry v. State,* 70 Ark. App. 122, 15 S.W.3d 367 (2000). The pertinent inquiry regarding standing to challenge a search is whether a defendant manifested a subjective expectation of privacy in the area searched and whether society is prepared to recognize that expectation as reasonable. *Richard v. State,* 64 Ark. App. 177, 983 S.W.2d 438 (1988). The issue of standing may be raised for the first time on appeal, because we may affirm the result reached by the trial court, if correct, even though the reason given by the trial court may have been wrong. *Id.*

It is well settled that the defendant, as the proponent of a motion to suppress, bears the burden of establishing that his Fourth Amendment rights have been violated. *Ramage v. State,* 61 Ark. App. 174, 966 S.W.2d 267 (1988). A person's Fourth Amendment rights are

not violated by the introduction of damaging evidence secured by a search of a third person's premises or property. *Fouse v. State,* 73 Ark. App. 134, 43 S.W.3d 158 (2001). One is not entitled to automatic standing simply because he is present in the area or on the premises searched or because an element of the offense with which he is charged is possession of the thing discovered in the search. *Ramage v. State, supra.* We will not reach the constitutionality of a search where the defendant has failed to show that he had a reasonable expectation of privacy in the object of the search. *Fouse v. State, supra.*

Officer Dodson testified at the suppression hearing during appellant's cross-examination that, although the affidavit identified the apartment as the residence of both Ms. Simmons and appellant, Ms. Simmons was the person who actually rented the apartment that was the object of the search. During appellant's cross-examination at trial, Dodson acknowledged that he had only assumed that appellant resided at the apartment.

Ms. Simmons was the sole witness who testified for the defense. She said that she and her daughter resided in the apartment, and introduced into evidence was her lease agreement showing them as the apartment's only occupants. Ms. Simmons testified that she had known appellant since childhood and that they were good friends, but she denied that she and appellant were romantically involved. She further testified that appellant was at the apartment along with a host of other people at the time of the search; that he had been there playing cards for about five-to-ten minutes before the search took place; and that he had come there to take her to Harrell, "where he lives at."

The evidence positively shows that appellant disavowed any connection whatsoever with the apartment, as he brought forth testimony that the apartment was leased by Ms. Simmons and that he lived elsewhere. Clearly, it was appellant's position that he was simply present at the time of the search and had only been there for a brief time. In *Rockett v. State,* 319 Ark. 335, 891 S.W.2d 366 (1995), the supreme court ruled that the appellants lacked standing where, at trial, they eschewed any association with the vehicle that was the object of the search. *See also Bernal v. State,* 48 Ark. App. 175, 892 S.W.2d 537 (1995) (holding that appellant lacked standing to challenge the seizure of a suitcase where appellant disclaimed ownership of it). Similarly, we conclude that appellant failed to show that he had a legitimate expectation of privacy in the apartment, and thus we affirm the denial of the motion to suppress.

Affirmed.

ROBBINS and NEAL, JJ., agree.