STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JUAN EUGENIO MARRERO,

Defendant-Appellant.

UNPUBLISHED
July 28, 2000

No. 218340
Kent Circuit Court
LC No. 97-013171-FH

Before: Doctoroff, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of possession with intent to deliver more than 50 grams, but less than 225 grams, of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii), and of maintaining a hotel room that was used for keeping or selling cocaine, MCL 333.7405(1)(d); MSA 14.15(7405)(1)(d). He was sentenced as an habitual fourth offender, MCL 769.12; MSA 28.1084, to an enhanced term of twelve to forty years' imprisonment for the possession with intent to deliver conviction, and to a term of one to three years' imprisonment for the conviction of maintaining a drug house. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court erred in denying his motion to suppress the evidence that the police seized after conducting a warrantless search of the hotel suite. Defendant claims that the police violated his Fourth Amendment rights by entering the hotel suite without a warrant. We disagree. When considering a motion to suppress evidence, this Court reviews the trial court's factual findings under the clearly erroneous standard and reviews the trial court conclusions of law de novo. *People v Faucett*, 442 Mich 153, 170; 499 NW2d 764 (1993); *People v Snider*, 239 Mich App 393, 406; __ NW2d __ (2000).

The Fourth Amendment, which applies to the states by incorporation through the Fourteenth Amendment, and article 1, § 11 of the Michigan Constitution prohibit unreasonable searches and seizures. *In re Forfeiture of $176,598*, 443 Mich 261, 264-265; 505 NW2d 201 (1993). We view the reasonableness of an officer's conduct "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham v Connor*, 490 US 386, 396; 109 S Ct 1865; 104 L Ed 2d 443 (1989). Absent certain exceptions, the Fourth Amendment requires police to obtain

a warrant and have probable cause to search a dwelling. *Payton v New York*, 445 US 573, 589-590; 100 S Ct 1371; 63 L Ed 2d 639 (1980). The Fourth Amendment protection against unreasonable searches and seizures extends to the occupant of a hotel or motel room. *People v Davis*, 442 Mich 1, 10; 497 NW2d 910 (1993).

Here, defendant claims that the police officers' initial entry into the hotel room was illegal and, therefore, the evidence seized in the hotel room must be suppressed. However, the officers legally entered the hotel room under the consent exception to the warrant requirement. A third party may consent to the entry or search of the premises by the police if the third party has an equal right of possession or control of the premises. *People v Goforth,* 222 Mich App 306, 311; 564 NW2d 526 (1997); *People v Jordan,* 187 Mich App 582, 587; 468 NW2d 294 (1991). In the instant case, the hotel manager requested that the officers enter the hotel room to encourage the unregistered guests to leave the room. The police officers' belief in a third party's ability to consent must be reasonable under the circumstances. *Goforth, supra* at 312. Here, the police officers' belief that the hotel manager had the right to control of the premises was reasonable because Judy Buitenhuis, who was the true registered guest, falsely told the officers that the registered guest had left the room, and a hotel policy prohibited individuals who were not family members of a registered guest from occupying the room in the absence of a registered guest. The police acted reasonably under the circumstances in responding to the hotel manager's request that they enter the hotel room to remove the unregistered guests.

Furthermore, once inside the hotel suite, the warrantless search of the suite was proper where both Buitenhuis and defendant consented to the search. In fact, defendant walked through the hotel suite with Detective Leonard, pointing to the places where the drugs and paraphernalia were located. A search conducted pursuant to consent is an established exception to the general warrant and probable cause requirements. *People v Borchard-Ruhland,* 460 Mich 278, 294; 597 NW2d 1 (1999). Therefore, the trial court properly denied defendant's motion to suppress the evidence seized in the hotel suite.

Next, defendant argues that the trial court erred in finding that his incriminating statements to the police were voluntarily made. We disagree. When reviewing a trial court's findings following a hearing pursuant to *People v Walker (On Rehearing),* 374 Mich 331, 338; 132 NW2d 87 (1965), we examine the entire record and make an independent determination of voluntariness based upon the totality of the circumstances surrounding the making of the statement. *People v Cipriano*, 431 Mich 315, 333-334; 429 NW2d 781 (1988); *People v Etheridge*, 196 Mich App 43, 57; 492 NW2d 490 (1992). Because we give deference to the trial court's ability to view the evidence, we will reverse the trial court's determination of the voluntariness of a defendant's statement only where the trial court's findings are clearly erroneous. *People v Haywood*, 209 Mich App 217, 226; 530 NW2d 497 (1995).

The testimony given at the Walker hearing supports the trial court's finding that defendant's statement was voluntary. Officer Bockheim testified that when he read defendant his *Miranda* rights, defendant did not state whether he understood his rights; therefore, Officer Bockheim stopped the interrogation and waited for Detective Leonard to arrive. Later, when Detective Leonard reread defendant his *Miranda* rights, defendant responded by stating, "What I say you can use against me, and I have to protect myself here." Although defendant initially gave vague answers to Detective Leonard's

questions, defendant eventually told Detective Leonard that "I know I'm in a lot of trouble, I want to be truthful with you, I'm gonna tell you the truth." Thereafter, defendant told Detective Leonard that he was the owner of the cocaine that he received earlier that day from his supplier. Further, defendant gave the officers his consent to search the room, his belongings, and rental vehicle, and defendant gave the officers a guided tour of the room, showing the officers where he hid contraband.

Defendant contends that Detective Leonard improperly questioned him after reading him the *Miranda* rights a second time because defendant invoked his right to remain silent after he was first read his *Miranda* rights by officer Bockheim by refusing to tell Officer Bockheim whether he was willing to speak and whether he understood his rights. It is true that, once a defendant invokes his Fifth Amendment right to remain silent during a custodial interrogation, the police may not initiate further questioning unless they "scrupulously" honor the defendant's invocation of his right to remain silent. *Michigan v Mosley*, 423 US 96, 104; 96 S Ct 321; 46 L Ed 2d 313 (1975); *People v Crusoe*, 433 Mich 666, 683, n 25; 449 NW2d 641 (1989); *People v Slocum (On Remand)*, 219 Mich App 695, 700; 558 NW2d 4 (1996). Here, however, defendant never invoked his right to remain silent after he was first read his *Miranda* rights by Officer Bockheim. Rather, he failed to say anything in response to Officer Bockheim's reading of the *Miranda* rights. The rule prohibiting repeated attempts to question a defendant after the defendant has invoked his right to remain silent is only applicable where a defendant's invocation of the right to remain silent is unequivocal. *People v Davis*, 191 Mich App 29, 36; 477 NW2d 438 (1991); *People v Jackson*, 158 Mich App 544, 550; 405 NW2d 192 (1987). Because defendant did not unequivocally invoke his right to remain silent after Officer Bockheim read him his *Miranda* rights, it was not improper for Detective Leonard to question defendant after rereading the *Miranda* rights to defendant.

Finally, defendant, who is of Spanish descent, argues that his statement was involuntary because he has trouble understanding the English language and, therefore, did not understand his *Miranda* rights. Defendant bases this argument, at least in part, upon the trial court's decision to have an interpreter present at the jury trial to ensure that defendant understood the proceedings. We note, however, that defendant raises this issue for the first time on appeal. To avoid forfeiture of this unpreserved issue, defendant must demonstrate plain error that affected his substantial rights. *People v Carines*, 460 Mich 750, 761-764; 597 NW2d 130 (1999). Because the testimony at the *Walker* hearing indicated that defendant understood the *Miranda* rights and did not have difficulty communicating in English, we find no such error.

Affirmed.

/s/ Martin M. Doctoroff
/s/ David H. Sawyer
/s/ Mark J. Cavanagh