

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERRIC DEVOHN WATKINS,

Defendant-Appellant.

UNPUBLISHED

December 14, 2004

No. 250028

Wayne Circuit Court

LC No. 03-000182-01

Before: Murphy, P.J., and White and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right his conviction following a bench trial of possession with intent to deliver less than fifty grams of heroin, MCL 333.7401(2)(a)(iv), and possession with intent to deliver less than five kilograms of marijuana, MCL 333.7401(2)(d)(iii). He was sentenced to lifetime probation, with concurrent terms of one year in jail. We affirm. This appeal is being decided without oral argument under MCR 7.214(E).

Defendant argues that incriminating evidence should have been suppressed, and the case dismissed, because the police improperly entered the house into which defendant had fled without a warrant. Defendant claims that he had a reasonable expectation of privacy in the house. We conclude that defendant is not entitled to relief based on this unpreserved issue.

Defendant asserts that the issue is preserved because the trial court addressed it. We conclude, however, that it is unpreserved because defendant did not move at or before trial to suppress evidence based on the allegedly improper police entry into the house. See *People v Carter*, 462 Mich 206, 214; 612 NW2d 144 (2000) (approving the rule that issues for appeal must be preserved by notation of objection in the record). Further, the trial court did not state that it was ruling on any issue pertaining to whether evidence should be suppressed based on an improper search or seizure. Rather, in the course of its factual findings, the trial court made essentially an offhand remark that the police “had every right to enter” the house because its occupants “had no right to be there, none whatsoever.” Because the present issue is unpreserved, our review is only for plain error that affected defendant’s substantial rights. *People v Green*, 260 Mich App 392, 396; 677 NW2d 363 (2004).

A defendant only has standing to challenge a search or seizure as unconstitutional if the defendant personally had a subjective expectation of privacy in the object of the search and seizure and that expectation of privacy is one that society is prepared to accept as reasonable.

People v Zahn, 234 Mich App 438, 446; 594 NW2d 120 (1999). Accordingly, a defendant's "expectation of privacy is legitimate only if the individual exhibited an actual, subjective expectation of privacy and that actual expectation is one that society recognizes as reasonable." *People v Taylor*, 253 Mich App 399, 404; 655 NW2d 291 (2002).

No evidence was presented that defendant had any right of ownership or possession with regard to the house or permission from anyone with such an interest to be present in the house. To the contrary, testimony at trial strongly suggested that defendant lacked any such interest. Officer Matt Fulks testified that he determined that none of the people found inside the house, including defendant, lived there. Miyaka McGuire testified that she was dating defendant at the time of the incident and that she and defendant were trying to buy the house. She also testified, however, that she did not know who owned the house, and that it was "a city house" with "back taxes" owed on it.

Thus, because the evidence reflected that defendant had no legal right to be in the house, there was no plain error based on the trial court's failure to suppress evidence based on the police entry into the house because it is not clear that defendant had a reasonable expectation of privacy inside the house under the circumstances.

In arguing that he had a reasonable expectation of privacy in the house, defendant essentially contrasts the condition of the instant house with the house at issue in *Taylor*, *supra*. *Taylor* involved a house that appeared to be "utterly abandoned." *Id.* at 409. This Court held in *Taylor* that police entry into an abandoned structure is presumptively reasonable because an owner has no expectation of privacy in abandoned property and, thus, that police officers do not need a warrant "before entering structures that, by all objective manifestations appear abandoned." *Id.* Accordingly, this Court concluded that the police did not violate any reasonable expectation of privacy of the defendant in that case by entering the house even assuming that the defendant had a valid lease for the house. *Id.* However, it does not plainly follow from the holding in *Taylor* that there is no expectation of privacy in an abandoned house that a person can have a reasonable expectation of privacy in a house in which the person has no legal right to be present. Thus, *Taylor* does not alter our conclusion that there was no plain error with regard to the admission of evidence flowing from the police entry into the house.

Affirmed.

/s/ William B. Murphy
/s/ Helene N. White
/s/ Kirsten Frank Kelly