STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH LYNNE JONES,

Defendant-Appellant.

UNPUBLISHED
July 5, 1996

No. 170997
LC No. 93-048207

Before: MacKenzie, P.J., and Saad and C.F. Youngblood*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree murder, MCL 750.316; MSA 28.548, three counts of felonious assault, MCL 750.82; MSA 28.277, three counts of kidnapping, MCL 750.349; MSA 28.581, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). One of the kidnapping counts was subsequently vacated. Defendant was sentenced to life imprisonment for the murder conviction, two to four years' imprisonment for the assault convictions, ten to 25 years' imprisonment for the kidnapping convictions, and the mandatory two-year term for the felony-firearm conviction. Defendant appeals as of right. We affirm.

On August 5, 1992, defendant discovered that his wallet, containing a large sum of money, was missing. Using a pistol, he forced the three men he suspected of taking the wallet to drive around the city of Flint in a cream-colored car. Defendant eventually let two of the men go. Evidence at trial indicated that he then shot and killed Shawn Jones in the basement of a house located at 618 East Philadelphia Street in Flint. On August 6, 1992, a cream-colored car was observed backing into Devil's Lake. Jones's body was discovered floating in the lake the next day.

Defendant contends that the trial court erred in refusing to suppress certain evidence obtained by the police during their warrantless search of the house located at 618 East Philadelphia Street. We disagree.

* Circuit judge, sitting on the Court of Appeals by assignment.

This Court will not reverse a trial court's decision following a suppression hearing unless it is clearly erroneous. *People v Burrell*, 417 Mich 439, 448; 339 NW2d 403 (1983). A finding is clearly erroneous when, after a review of the record, this Court is left with a definite and firm conviction that a mistake has been made. *People v Barclay*, 208 Mich App 670, 675; 528 NW2d 842 (1995). In this case, we find no clear error in the trial court's determination that defendant did not have standing to challenge the search. See *People v Smith*, 420 Mich 1; 360 NW2d 841 (1984). As noted by the court, the only testimony at the suppression hearing regarding the Philadelphia Street residence was that of Sgt. Rick Warren. That testimony indicated that the house was defendant's former residence; defendant currently lived on Mackin Road. In the absence of evidence that defendant retained a reasonable expectation of privacy in the house, the court's finding was not clearly erroneous. *Id.* Even if defendant had standing to challenge the search, the court did not clearly err in concluding that the warrantless search was justified by exigent circumstances. A police dispatcher radioed officer Keith Speers and told him that blood and a body had been discovered by an anonymous person at the address. This was sufficient to create a reasonable belief that there might be an individual in the house who was in need of assistance, justifying the original entry. *City of Troy v Ohlinger*, 438 Mich 477, 484; 475 NW2d 54 (1991); *People v Davis*, 442 Mich 1; 497 NW2d 910 (1993). See also *Arizona v Evans*, ___ US ___; 115 S Ct 1185; 131 L Ed 2d 34 (1995). Finally, the trial court did not clearly err in finding that defendant's consent to search the Philadelphia Street and Mackin Road addresses was not coerced. A review of the circumstances concerning defendant's consent to the search reveals that the consent given was freely given, unequivocal, and specific. *People v Davis*, 189 Mich App 468, 474; 473 NW2d 748 (1991), reversed on other grounds 442 Mich 1; 497 NW2d 910 (1993). Because the validity of consent depends on the totality of the circumstances, *id*, we decline to hold, as defendant suggests, that his consent was presumptively coerced since it was given after defendant requested to speak to an attorney. Accordingly, defendant's claim that the trial court should have suppressed evidence discovered in the Philadelphia Street house must fail.

Defendant also contends that reversal is required because the trial court improperly refused to instruct the jury on claim of right as a defense to kidnapping. We disagree. Claim of right has been recognized as a defense to specific intent crimes. See, e.g., *People v Holcomb*, 395 Mich 326; 235 NW2d 343 (1975). Forcible confinement kidnapping – the form of kidnapping involved in this case – is not a specific intent crime, however. *People v Jaffray*, 445 Mich 287, 298; 519 NW2d 108 (1994). We find unpersuasive defendant's contention that the asportation element of the crime transforms the offense into a specific intent crime, and therefore find no instructional error.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Henry William Saad
/s/ Carole F. Youngblood