

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT EARL TAYLOR,

Defendant-Appellant.

UNPUBLISHED

December 20, 1996

No. 170129

LC No. 93-000725-FH

Before: Fitzgerald, P.J., and Holbrook, Jr. and E.R. Post,* JJ.

PER CURIAM.

Defendant was convicted by a jury of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). He was sentenced to a prison term of 48 to 240 months, to be served consecutively to a sentence he was then serving for a previous conviction of the same offense. Defendant appeals as of right. We affirm.

Members of the Southwest Enforcement Team [SWET] conducted a controlled buy of cocaine at a motel in Battle Creek. Confidential informant Daniel Parks purchased two rocks of crack cocaine in room 113 of the motel. Although surveillance officers did not see the occupant of that room, Parks identified defendant as the person from whom he purchased the contraband.

Approximately three hours later, SWET team members conducted a search of the motel room pursuant to a valid search warrant. Defendant was not present when the officers arrived, but used a key to enter the room while the search was in progress. Defendant was immediately placed under arrest. A search incident to that arrest resulted in the seizure of additional cocaine and \$296.00, including the money used by Parks in the controlled buy.

I

Defendant first argues that the trial court erred in rejecting a plea agreement reached by the parties on the first day of trial. However, the record fails to support defendant's claim that the parties

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

actually reached an agreement. After losing his motion to suppress evidence, defendant decided to accept a plea offer which he had previously rejected. Although the trial court stated it would not accept a plea agreement after the jury had been selected, the record is silent regarding plaintiff's response to defendant's change of heart. Defendant's challenge cannot be predicated on a silent record.

II

Defendant next challenges the trial court's denial of his motion to suppress evidence seized during a search of his person incident to his arrest. We will not reverse a trial court's denial of a motion to suppress unless it is clearly erroneous. *People v Burrell*, 417 Mich 439, 448, 339 NW2d 403 (1983).

A search of a person incident to a valid arrest requires no additional justification. *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996). A police officer may arrest a person without a warrant if he "has reasonable cause to believe that a felony has been committed and reasonable cause to believe that the person has committed it." MCL 764.15(1)(d); MSA 28.874. In the present case, Parks identified defendant as the person who sold him cocaine during a controlled buy in room 113 earlier in the evening. Although surveillance officers did not see defendant leave the motel room, defendant used a key to enter the room as officers searched it, thus corroborating Parks' claim. We find ample evidence to support defendant's warrantless arrest, and thus hold that the subsequent search of defendant was a constitutionally valid search incident to arrest.

III

Last, defendant insists that his trial counsel was ineffective. Specifically, defendant argues that counsel should have renewed the motion to suppress upon hearing a surveillance officer testify that she did not see defendant leave room 113 between the time of the controlled cocaine buy and the execution of the search warrant. Regardless of whether defendant was seen leaving the motel room, the search of defendant was constitutionally valid; thus, defendant's argument must fail. See *People v Lyles*, 148 Mich App 583, 596; 385 NW2d 686 (1986) ("[a] claim of ineffective assistance of counsel based on defense counsel's failure to object or to make motions that could not have affected defendant's chances for acquittal is without merit.").

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Edward R. Post