# STATE OF MICHIGAN

# COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DEMICO E. CRAWFORD and LAMAR D. BLAKE,

Defendants-Appellees.

UNPUBLISHED
March 3, 1998

No. 195387
Recorder's Court
LC No. 96-001160

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Before: Gage, P.J., and Reilly and Jansen, JJ.

PER CURIAM.

Following a preliminary examination, both defendants were bound over for trial on a charge 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). Defendant Blake was also bound over on a charge of possession with intent to deliver marijuana, MCL 333.7401(2)(d); MSA 14.15(7401)(2)(d). The trial court thereafter granted defendants' motions to suppress evidence and dismissed the charges. The prosecution appeals as of right. We affirm the dismissal of the charge against defendant Crawford, but we reverse and remand for further proceedings with regard to the dismissal of the charges against defendant Blake.

The sole issue raised by the prosecution is whether defendants had standing to object to the warrantless entry to a motel room, which led to the seizure of the evidence of cocaine and marijuana. In determining whether a person has a legitimate expectation of privacy so as to confer standing to challenge a search and seizure as violative of the Fourth Amendment, a two-part inquiry is employed:

> First, a defendant must demonstrate that, under the totality of the circumstances, there existed a legitimate personal expectation of privacy in the area or object searched. *California v Greenwood*, 486 US 35, 39; 108 S Ct 1625; 100 L Ed 2d 30 (1988); *People v Armendarez*, 188 Mich App 61, 70-71, 468 NW2d 893 (1991). Second, the individual's expectation must be one that society accepts as reasonable. *California*, *supra*; *Armendarez*, *supra*. The Fourth Amendment right to freedom from unreasonable searches and seizures is personal, and the defendant bears the burden of proving standing as a result of a personal expectation of privacy. *People v Nash*, 418

Mich 196, 204; 341 NW2d 439 (1983); *People v Butler*, 193 Mich App 63, 70; 483 NW2d 430 (1992). [*People v Lombardo*, 216 Mich App 500, 504-505; 549 NW2d 596 (1996).]

The trial court's findings of fact at the suppression hearing will generally not be reversed unless clearly erroneous. *People v Melotik*, 221 Mich App 190, 198; 561 NW2d 453 (1997). However, if the facts are not disputed, the trial court's application of the constitutional standard is not entitled to the same deference as the factual findings. Questions of law are reviewed de novo. *Id.*

DEFENDANT CRAWFORD'S STANDING

We disagree with the prosecution's claim that the trial court made no finding that defendant Crawford had any standing to challenge the search of the motel room. The record discloses that the trial court was aware of the standing issue and resolved it by finding it more likely than not that Crawford rented Room 4, notwithstanding the documentary evidence which showed Room 7 as the room rented to Crawford. An appellate court will defer to the trial court's resolution of factual issues, especially when it involves the credibility of witnesses. *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997). In light of Crawford's testimony that he was given the key to and took possession of Room 4 and the absence of any evidence that the rental of Room 7 was an essential part of the agreement between Crawford and the motel, we hold that the prosecution has not shown any clear error in the trial court's finding of fact.

We also note that, while "arcane" distinctions developed in property and tort law do not control the ability to claim the protections of the Fourth Amendment, *Rakas v Illinois*, 439 US 128, 143; 99 S Ct 421; 58 L Ed 2d 387 (1978); *Armendarez*, *supra* at 71, the trial court's finding that Crawford rented Room 4 supports the legal conclusion that Crawford had the requisite standing. Under the totality of the circumstances, Crawford showed both a legitimate, personal expectation of privacy and one which society accepts as reasonable. *Lombardo*, *supra*. See also *United States v Kitchen*, 114 F3d 29, 31-32 (CA 4, 1997); *United States v Carr*, 939 F2d 1442, 1446 (CA 10, 1991) (important considerations in the expectation of privacy equation include ownership, lawful possession, or lawful control of the premises searched); and *People v Davis*, 442 Mich 1, 10; 497 NW2d 910 (1993) (an occupant of a hotel or motel room is entitled to Fourth Amendment protections against unreasonable searches and seizures).

Finally, the prosecution asserts in a footnote of their argument that the trial court failed to make any findings on whether defendant Crawford consented to the entry of the room. The prosecution also suggests that a remand may be in order for reconsideration of this issue if this Court reject its standing argument. We find that this issue is not properly before us because it was not identified in the statement of the questions. *People v Yarger*, 193 Mich App 532, 540 n 3; 485 NW2d 119 (1992). We nevertheless note that, although the trial court did not use the word "consent," its findings reveal that it was aware of the conflicting proofs on whether the police officers were invited into Room 4 and resolved this issue in favor of Crawford because it had some misgivings about what testimony was correct. We conclude that the prosecution's failure to brief the merits of the trial court's conclusion that

a search warrant was necessary constitutes an abandonment of this issue. See *People v Kent*, 194 Mich App 206, 210; 486 NW2d 110 (1992).

DEFENDANT BLAKE'S STANDING

With regard to defendant Blake's standing, the prosecution argues that the trial court erred in finding that Blake lacked standing to object to the warrantless entry to Room 4 but, notwithstanding this finding, granting Blake's motion to suppress the evidence on the ground that the police failed to obtain a search warrant. We agree. Fourth Amendment Rights are personal in nature and may not be asserted vicariously. *People v Smith*, 420 Mich 1, 17; 360 NW2d 841 (1984); *Armendarez*, *supra* at 71. Further, the exclusionary rule will only apply if evidence was obtained by official impropriety directed at the person moving for suppression. *People v Jordan*, 187 Mich App 582, 589; 468 NW2d 294 (1991). In the case at bar, the police impropriety underlying the trial court's decision was a warrantless entry to Room 4. As such, Blake's lack of standing to object to this warrantless entry should have precluded him from having evidence excluded on this ground.

Although we find that the prosecution has established error, we will address defendant Blake's claim that he had standing to object to the warrantless entry to Room 4 under *Minnesota v Olson*, 495 US 91; 110 S Ct 1684; 109 L Ed 2d 85 (1990), pursuant to the rule that an appellee who has taken no cross appeal may still urge in support of the judgment in its favor reasons that were rejected by a lower court. *Ass'n of Business Advocating Tariff Equity v Public Service Comm*, 192 Mich App 19, 24; 480 NW2d 585 (1991). Contrary to Blake's argument, there is no evidence that he was an overnight guest in Room 4. Defendant Crawford's testimony established only that defendant Blake was an invited guest and that Blake had been in Room 4 for ten or fifteen minutes before the police entered. Based on this testimony, the trial court found, and we agree, that Blake did not establish his standing to challenge the warrantless entry to Room 4. Neither prong of the test for standing was established by Blake. *Rakas*, *supra* at 142; *Terry v Martin*, 120 F3d 661 (CA 7, 1997); *United States v Grandstaff*, 813 F2d 1353, 1357 (CA 9, 1987); *People v Lorey*, 156 Mich App 731, 733; 402 NW2d 84 (1986).

We further note that, while Blake does not have standing to object to the warrantless entry to Room 4, he may have standing to challenge the lawfulness of the seizure of property from his person. *Rakas*, *supra* at 142 n 11; see *Armendarez*, *supra* at 71. However, because the only question before us concerns whether the evidence seized was the fruit of an unlawful, warrantless entry to Room 4, we express no opinion on this question.

Affirmed in part and reversed in part. The case is remanded to the trial court for further proceedings as to defendant Blake consistent with this opinion. We do not retain jurisdiction.

/s/ Hilda R. Gage
/s/ Maureen Pulte Reilly
/s/ Kathleen Jansen