

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TYRONE MALEEK DAVENPORT,

Defendant-Appellant.

UNPUBLISHED

March 17, 2005

No. 250695

Wayne Circuit Court

LC No. 99-380362

Before: Murray, P.J., and Markey and O’Connell, JJ.

MEMORANDUM.

Defendant appeals by delayed leave granted from his plea-based convictions of possession of a firearm during the commission of a felony, MCL 750.227b, and second-degree murder, MCL 750.317, for which he was sentenced to serve two years’ imprisonment and eighteen to thirty years’ imprisonment, respectively. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

At his plea proceeding, defendant admitted that on August 10, 2001, he and two companions were armed with guns and intended to commit a robbery. Defendant flagged down a taxicab, demanded money from the driver, then shot and killed the driver when he attempted to speed away. On appeal, defendant argues that the trial court erred in denying his motion to suppress his statement to the police. However, this issue is fatally flawed for procedural reasons, obviating our need to reach its merits.

Criminal defendants pleading guilty waive their rights to “raise as error on appeal the denial of a motion to suppress evidence” *People v New*, 427 Mich 482, 485; 398 NW2d 358 (1986). Instead, such defendants “may raise on appeal only those defenses and rights which would preclude the state from obtaining a valid conviction against the defendant.” *Id.* at 491. Our Supreme Court elaborated, “Such rights and defenses ‘reach beyond the factual determination of defendant’s guilt and implicate the very *authority* of the state to bring a defendant to trial” *Id.* (emphasis retained, internal quotations marks and citation omitted). The Court further stated that “where the defense or right asserted by defendant relates solely to the capacity of the state to prove defendant’s factual guilt, it is subsumed by defendant’s guilty plea.” *Id.*

The exception is the “conditional plea,” where a defendant, as part of the plea agreement, reserves the right to appeal specified pretrial rulings. MCR 6.301(C)(2). See also *New, supra* at

490-491. However, “[t]he ruling or rulings as to which the defendant reserves the right to appeal must be specified orally on the record or in a writing made a part of the record.” MCR 6.301(C)(2).

In this case, defendant fails to acknowledge this preservation requirement in his brief on appeal by pointing to any statement or document in the record indicating that his plea was conditioned on appealing the suppression issue, and our review of the record bring none to light.

An issue that is affirmatively waived, as opposed to passively forfeited, is extinguished, leaving the appellate court with nothing to review. *People v Carter*, 462 Mich 206, 214-216; 612 NW2d 144 (2000). Because defendant affirmatively waived objections to the admissibility of his statement to the police by pleading guilty, without conditioning that plea on preservation of the issue, we deem the issue waived and thus extinguished. *New, supra* at 491.

Affirmed.

/s/ Christopher M. Murray

/s/ Jane E. Markey

/s/ Peter D. O’Connell