

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

LAMONT CHARLES ETHERIDGE,

Defendant-Appellee.

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UNPUBLISHED

May 31, 2005

No. 254866

Oakland Circuit Court

LC No. 2003-191131-FH

Before: Neff, P.J., and Owens and Fort Hood, JJ.

PER CURIAM.

Defendant was convicted after a jury trial of carrying a concealed weapon, MCL 750.227, felon in possession of a firearm, MCL 750.224f, felonious assault, MCL 750.82, three counts of possession of a firearm during the commission of a felony, second offense, MCL 750.227b, and delivery of marijuana, MCL 333.7401(2)(d)(2). Defendant pled guilty to being a felon in possession of a firearm, MCL 750.224f and to being a habitual offender, third, MCL 769.11. He appeals as of right and we affirm.

On April 27, 2003, Troy police officers arrested defendant outside a hotel in Troy after a search of the hotel room where defendant was visiting friends revealed a handgun, marijuana and personal possessions belonging to defendant. The two primary prosecution witnesses, Nancy Bigelow and Karen Bryant, accused defendant of keeping them in the hotel room against their will at gunpoint.

On appeal of his convictions, defendant first argues that his Fourth Amendment rights were violated when the police conducted a warrantless search of the hotel room he was visiting in Troy. Standing to challenge a search or seizure is not automatic. *People v Smith*, 420 Mich 1, 20; 360 NW2d 841 (1984); *People v Jordan*, 187 Mich App 582, 589; 468 NW2d 294 (1991). Rather, Fourth Amendment rights are personal and cannot be asserted vicariously. *People v Wood*, 447 Mich 80, 89; 523 NW2d 477 (1994). The defendant bears the burden of establishing standing. *People v Lombardo*, 216 Mich App 500, 505; 549 NW2d 596 (1996). A person needs a special interest in the area searched or the article seized. The test is whether he had a reasonable expectation of privacy in the object or area of the intrusion. *Smith, supra* at 21; *People v Custer (On Remand)*, 248 Mich App 552, 560; 640 NW2d 576 (2001). Although a guest who stays overnight and keeps personal belongings in the residence of another might have a reasonable expectation of privacy, a mere visitor at the apartment or hotel does not and lacks

standing to challenge the search and seizure. *People v Parker*, 230 Mich App 337, 340-341; 584 NW2d 336 (1998).

Defendant cannot meet the standing test on this record. The room searched was rented by Cortez Smith who was also present when defendant was arrested. There is nothing to suggest that defendant was an overnight guest in the hotel room. To the contrary, both Bigelow and Bryant testified that defendant repeatedly told them that they would be leaving the hotel room soon to go to a rap concert. The three had driven to Detroit from Muskegon and visited other places before joining the party at the hotel room. Because defendant did not have a reasonable expectation of privacy in the hotel room or its contents, he did not establish his standing to challenge the warrantless entry to the hotel room.

Defendant next asserts two claims of ineffective assistance of counsel. Effective assistance of counsel is presumed and the defendant must overcome a strong presumption that counsel's performance constituted sound trial strategy. *People v Wilson*, 257 Mich App 337, 362, 668 NW2d 371 (2003). In order to establish ineffective assistance of counsel, the attorney's performance must have been “objectively unreasonable in light of prevailing professional norms” and “but for the attorney's error or errors, a different outcome reasonably would have resulted.” *People v Harmon*, 248 Mich App 522, 531; 640 NW2d 314 (2001).

Defendant first argues that counsel was ineffective for failing to move to suppress the evidence seized in the hotel room. Because we determined defendant lacked standing to assert a challenge to the warrantless search, any motion to suppress would have been futile. Defense counsel was not required to argue a meritless position. *People v Riley*, 468 Mich 135, 142; 659 NW2d 611 (2003).

Next, defendant argues that defense counsel should not have cross-examined Bigelow about whether she asked for money from defendant's family because this “opened the door” to testimony from Bigelow on redirect examination that she had been threatened by relatives of defendants and offered money in exchange for her not testifying against defendant. We disagree.

Decisions regarding the cross-examination of witnesses are presumed to be matters of trial strategy. *People v Rockey*, 237 Mich App 74, 76-77; 601 NW2d 887 (1999). This Court will not substitute its judgment for that of counsel regarding matters of trial strategy, nor will it assess counsel's competence with the benefit of hindsight unless defendant is denied a substantial defense. *Id.* A substantial defense is one which might have made a difference in the outcome of the trial. *People v Hyland*, 212 Mich App 701, 710; 538 NW2d 465 (1995).

In this case, defense counsel was attempting to discredit Bigelow's testimony by implying that she may have contacted defendant's family to seek money not to testify. The decision to cross-examine Bigelow was a matter of trial strategy that apparently was, at least to some extent, effective. The jury found defendant not guilty of felonious assault and felony firearm with regard to Bigelow. Defendant therefore fails to demonstrate in his brief how, if defense counsel had not pursued these questions, the outcome of the trial would have been affected to his prejudice and he has failed to carry his burden of proof in demonstrating that the questions to Bigelow during cross-examination constituted ineffective assistance of counsel.

Next, defendant argues the trial court gave improper jury instructions when he responded to two jury questions during its deliberations. However, following the trial court's response to the jury questions during deliberations the trial judge specifically asked defense counsel if he had "[a]ny objections or corrections" to the additional instructions and defense counsel expressly approved those instructions. By expressly approving the instructions, defendant has waived this issue on appeal. *People v Carter*, 462 Mich 206, 215-216; 612 NW2d 144 (2000). A defendant who waives his or her right under a rule may not seek appellate review of a claimed deprivation of that right. Therefore, we decline to review this issue because the waiver has extinguished any error. *Carter, supra* at 215.

Finally, defendant argues that the trial judge exceeded his constitutional sentencing authority, as announced in *Blakely v Washington*, 542 US \_\_\_; 124 S Ct 2531; 159 L Ed 2d 403 (2004), because the trial judge based defendant's sentence on factual findings that were the trial judge's observations and not that of a jury. We disagree. Defendant failed to properly present the issue to this Court in his statement of questions presented. Ordinarily, no point will be considered which is not set forth in the statement of the questions presented. *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000). Regardless, defendant's argument that he must be resentenced based on the *Blakely* decision is without merit. As noted in *People v Drohan*, 264 Mich App 77, 89 n 4; 689 NW2d 750 (2004), this Court is bound by our Supreme Court's decision in *People v Claypool*, 470 Mich 715, 730 n 14; 684 NW2d 278 (2004), that *Blakely* does not apply to issues concerning Michigan's Sentencing system.<sup>1</sup>

Affirmed.

/s/ Janet T. Neff  
/s/ Donald S. Owens  
/s/ Karen M. Fort Hood

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<sup>1</sup> Our Supreme Court has granted leave in *Drohan, supra*, to consider the sole issue of whether *Blakely* applies to Michigan's sentencing scheme. *People v Drohan*, 472 Mich 881; 693 NW2d 823 (2005).