

OPINION SUMMARY
MISSOURI COURT OF APPEALS—EASTERN DISTRICT
DIVISION FOUR

STATE OF MISSOURI,)	No. ED99548
)	
Appellant,)	Appeal from the Circuit Court
)	of the City of St. Louis
vs.)	1122-CR01237-01
)	
TERRY NEBBITT,)	Honorable Rex M. Burlison
)	
Respondent.)	FILED: July 29, 2014

Terry Nebbitt (Defendant) appeals the judgment of the Circuit Court of the City of St. Louis convicting him of felony possession of a controlled substance and misdemeanor possession of drug paraphernalia. In his two points on appeal, Defendant claims the trial court erred in refusing to suppress physical evidence. In Point One, Defendant contends the trial court erred in overruling his motion to suppress and admitting into evidence the drugs and drug paraphernalia because police officers conducted a warrantless search of his apartment and the seizure of the drug paraphernalia was not justified by the plain view doctrine. In Point Two, Defendant asserts that the trial court erred in overruling the motion to suppress and admitting into evidence the drugs and paraphernalia because police officers had neither reasonable suspicion nor probable cause to detain Defendant.

AFFIRMED IN PART AND REMANDED IN PART.

Division Four Holds: We do not reach the issue of whether the trial court erred in overruling Defendant’s motion to suppress evidence because the trial court failed to make the factual and credibility findings and apply the burden of proof required by Section 542.296. We therefore remand the case to the trial court for, if necessary, a supplemental hearing to determine whether the drug and paraphernalia evidence was in the police officers’ plain view from Defendant’s doorway. In regard to Defendant’s Point Two, we conclude that Defendant failed to preserve this issue for appeal and hold that the trial court did not plainly err in denying Defendant’s motion to suppress evidence on the grounds that Defendant’s detention was not supported by reasonable suspicion.

Opinion by: Patricia L. Cohen, Judge
Lisa S. Van Amburg, Presiding Judge and Philip M. Hess, Judge, Concur.

Attorney for Appellant: Matthew William Huckleby
Attorney for Respondent: Evan Joseph Buchheim

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS
BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT
BE QUOTED OR CITED.**