

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ISRAEL J. GONZALEZ,

Defendant-Appellant.

FOR PUBLICATION

April 8, 2003

9:10 a.m.

No. 223401

Genesee Circuit Court

LC No. 99-004399-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID ANTHONY GUERRA,

Defendant-Appellant.

No. 223402

Genesee Circuit Court

LC No. 99-004416-FH

Updated Copy

May 23, 2003

Before: White, P.J., and Kelly and R.S. Gribbs*, JJ.

WHITE, P.J. (*concurring*).

While I agree with the result reached by the majority, I write separately because my reasoning differs on several issues.

Regarding evidence of the criminal activities of others, I agree that evidence concerning the album seized from Jose Diaz's home was relevant and admissible. I find no error requiring reversal in the admission of the other evidence challenged on appeal because I conclude that the admission of evidence of guns found in the search was harmless, and that witness Theresa Goodman provided adequate foundation for testimony concerning the drug transactions with Diaz and Mary Parrish.

I agree that any error in admitting Lt. Gary Hagler's testimony regarding various individuals' membership in the gang did not affect the outcome of the trial. *People v Lukity*, 460 Mich 484, 495; 596 NW2d 607 (1999).

I conclude that the trial court erred in refusing to allow defendant Guerra to question Parrish regarding her plea agreement. However, the error did not affect the outcome of the trial. *Id.*

Regarding the similar-acts evidence and the jury's consideration of the evidence in relation to the count of possession with intent to deliver, I find no error requiring reversal under the circumstances because defendant Guerra did not request a limiting instruction when the evidence was admitted, and objects to the evidence only on the basis of failure to give the notice required by MRE 404(b).

Lastly, with regard to defendant Guerra's motion to suppress, I conclude that the initial search was far more expansive than is permissible as a protective sweep. *Maryland v Buie*, 494 US 325, 337; 110 S Ct 1093; 108 L Ed 2d 276 (1990); *People v Shaw*, 188 Mich App 520, 524-525; 470 NW2d 90 (1991). However, because the marijuana that formed the basis for the search warrant was observed in plain view while the officers were engaged in permissible, protective activity, I agree that the denial of the motion to suppress should be affirmed.

/s/ Helene N. White