STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SQUIRE ISABELL JR.,

Defendant-Appellant.

UNPUBLISHED
October 28, 1997

No. 193521
Washtenaw Circuit Court
LC No. 95-004178-FH

Before: Young, P.J., and Markman and Smolenski, JJ.

PER CURIAM.

Defendant was convicted of possession with intent to deliver less than fifty grams of heroin, MCL 333.7401(1) and (2)(a)(iv); MSA 14.15(7401)(1) and (2)(a)(iv), possession of less than twenty-five grams of cocaine, MCL 333.7403(1) and (2)(a)(v); MSA 14.15(7403)(1) and (2)(a)(v), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced as an habitual offender, MCL 769.12; MSA 28.1084 (three or more felonies) and MCL 769.13; MSA 28.1085, to consecutive terms of two years' imprisonment for the felony-firearm conviction, five to twenty years' imprisonment for the heroin conviction and five to fifteen years' imprisonment for the cocaine conviction. Defendant appeals as of right. We affirm.

Defendant's convictions arise out of the December, 1994, execution of a search warrant at a residence located at 411 Villa Drive in Ypsilanti. When police officers entered the residence's master bedroom, defendant, who was lying on a bed, began moving toward the left side of the bed. This bed had a large headboard that extended to the sides of the bed. The left side of the headboard contained men's clothing, jewelery and toiletries, while the right side of the headboard contained women's clothing and toiletries. On the left side of the headboard, the officers found cocaine, marijuana, heroin, a small amount of currency and a binder listing dollar amounts that had the word "weed" written it. In a drawer on the left side of the bed, the officers found a loaded gun among some men's socks. In a closet, the officers found a trunk with men's clothing hanging above it and men's shoes around it. The trunk contained heroin, a substantial amount of cash, a cutting agent, a driver's license application for defendant, papers listing telephone numbers and drug transactions, and numerous coin envelopes often used by drug traffickers to package narcotics such as heroin,. Written on one of the coin envelopes

was the word "raw," which is a term indicating that heroin has not been cut, as well as the date of "11/14 of '94." Written on another envelope were the words "raw and ready." From somewhere in the residence, the police recovered defendant's voter registration receipt that listed 411 Villa Drive as defendant's address. A police officer also observed residency papers with respect to defendant throughout the residence.

We first consider the issues raised in the brief filed by defendant's appellate counsel. Defendant raises a challenge to the sufficiency of the evidence of certain elements of the crimes of which he was convicted. We find no error. In reviewing whether sufficient evidence was presented to sustain a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1202 (1992). Utilizing this standard in this case, we conclude that with respect to defendant's cocaine conviction a rational trier of fact could have found beyond a reasonable doubt that defendant had dominion or control over, and therefore constructively possessed, the cocaine. *People v Konrad*, 449 Mich 263, 270-272; 536 NW2d 517 (1995); *Wolfe, supra* at 519-521. With respect to defendant's felony-firearm conviction, a rational trier of fact could have found beyond a reasonable doubt that defendant constructively possessed the loaded gun because the gun was readily accessible to defendant. *People v Williams*, 212 Mich App 607, 609-610; 538 NW2d 89 (1995). And, with respect to defendant's heroin conviction, a rational trier of fact could have found beyond a reasonable doubt that defendant intended to deliver heroin. *Konrad, supra* at 271, n 4; *Wolfe, supra* at 524-526.

Next, defendant raises a challenge to the admission of certain evidence. First, defendant contends that drug profile evidence was improperly admitted. Next, defendant argues that evidence of the seized marijuana and binder labeled "weed" was improperly admitted. Finally, defendant contends evidence of a previous controlled buy of cocaine from the residence was improperly admitted. However, we decline to address these evidentiary issues for the following reasons. First, defendant failed to object to the admissibility of any of this evidence. In *People Kilbourn*, 454 Mich 677, 686; 563 NW2d 669 (1997), our Supreme Court flatly declined to review an unpreserved evidentiary issue, noting that "[i]t is well established that objections to admissibility not properly raised at trial cannot be later asserted on appeal." Second, even though our Supreme Court has established a procedure for the review of unpreserved nonconstitutional error, such error must be *plain* error. See MRE 103(d); *People v Grant*, 445 Mich 535, 547; 520 NW2d 123 (1994). In this case, we fail to discern plain error from the admission of the disputed evidence. Specifically, although this Court has held that drug profile evidence is inadmissible as substantive evidence of a defendant's guilt in a drug case, this Court has likewise recognized the admissibility of, as arguably occurred in this case, expert testimony explaining the significance of seized contraband or other items of personal property. *People v Humphreys*, 221 Mich App 443, 447; 561 NW2d 868 (1997); *People v Hubbard*, 209 Mich App 234, 239; 530 NW2d 130 (1997). With respect to the admission of the evidence of a previous controlled buy, the marijuana and the binder, we note that the jury was entitled to hear the "complete story." *People v Sholl*, 453 Mich 730, 742; 556 NW2d 861 (1996). And finally, because we are unable to conclude that plain error occurred, we likewise conclude that our failure to consider these

evidentiary issues will not result in manifest injustice. *People v Mayfield*, 221 Mich App 656, 661; 562 NW2d 272 (1997).

Next, defendant argues that the evidence of the cocaine and heroin should not have been admitted because it was obtained as a result of an unconstitutional search. Defendant maintains that a separate warrant was required to search the containers in which the cocaine and heroin was found. Although defendant failed to move to suppress this evidence at trial, appellate review is nevertheless appropriate because defendant raises a constitutional issue that could be decisive to the outcome of the case. *People v Pitts*, 222 Mich App 260, 263; 564 NW2d 93 (1997). We likewise assume defendant has standing to raise this issue. Although the record does not contain and defendant has failed to provide this Court with a copy of the search warrant authorizing the search of 411 Villa Drive, a police officer's testimony at the preliminary examination indicates that the warrant authorized a search of 411 Villa Drive for drugs, narcotics, contraband and weapons. A warrant authorizing the search of premises authorizes the search of containers within the premises that might contain items named in the warrant. *People v Daughenbaugh*, 193 Mich App 506, 516; 484 NW2d 690, modified on another ground 441 Mich 867 (1992); see also *People v Coleman*, 436 Mich 124; 461 NW2d 615 (1990). Thus, we conclude that defendant's argument has no merit. In light of this conclusion, we hold that counsel's failure to move to suppress the cocaine and heroin did not deny defendant the effective assistance of counsel. *People v Zinn*, 217 Mich App 340, 350; 551 NW2d 704 (1996).

Next, defendant argues that the trial court erred in twice denying motions to adjourn trial until our Supreme Court issued its decision in *Wayne Co Prosecutor v Dep't of Corrections*, 451 Mich 569; 548 NW2d 900 (1996). This Court reviews a trial court's decision on whether to grant a continuance for an abuse of discretion. *People v Pena*, ___ Mich App ___; ___ NW2d ___ (Docket No. 186907, issued 7/2/97), slip op p 5. We reject defendant's attempt to cast his argument in constitutional terms, i.e., the right to counsel. Rather, we note that defendant was on parole when the felonies involved in this case were committed. In *Wayne Co Prosecutor*, our Supreme Court decided how much of a parolee's remaining sentence must the parolee serve when the parolee commits another felony and is returned to prison. The record in this case indicates that defendant's trial was adjourned at least twice. Defendant has cited no authority for the proposition that his trial in this case should have been adjourned again while our Supreme Court decided a sentencing issue related to a sentence imposed on defendant in a previous case. Thus, we find no abuse of discretion.

Finally, defendant argues that the trial court improperly scored offense variables 8 and 16. However, in this case defendant was sentenced as an habitual offender. The sentencing guidelines do not apply to the sentencing of habitual offenders. *People v Hansford*, 454 Mich 320, 323; 562 NW2d 460 (1997). Thus, we decline to address this issue.

Next, we consider the issues raised in defendant's pro se brief. First, defendant argues that reversal is required because the prosecutor did not disclose three exculpatory laboratory reports until after the jury was sworn. In criminal cases tried after January 1, 1995, discovery is governed by MCR 6.201. *People v Tracey*, 221 Mich App 321, 324; 561 NW2d 133 (1997). Under MCR 6.201(B)(1) a prosecutor has a duty to provide a defendant with any exculpatory information or evidence known to the prosecutor. See also *Tracey, supra*. In this case, the three laboratory reports

at issue indicated that three substances seized during the search of 411 Villa Drive tested negative for the presence of controlled substances. However, these reports did not effect the test results for the controlled substances that formed the basis for defendant's convictions. Thus, we fail to understand how the laboratory reports constituted exculpatory evidence. Accordingly, it appears that the prosecutor had no duty to disclose this evidence. *Tracey, supra* at 324-325. In any event, we note that the trial court found that the failure to disclose the three laboratory reports did constitute a violation of the discovery rule and ordered that the prosecutor could not introduce the reports into evidence. However, the trial court stated that defendant could use the reports if defendant wished to do so. MCR 6.201(I) provides that "[i]f a party fails to comply with this rule, the court, in its discretion, may order that testimony or evidence be excluded, or may order another remedy." Although defendant suggests the contrary, our review of the record finds no basis to conclude that the prosecutor knowingly withheld the three laboratory reports. Moreover, defendant has failed to specify how he was actually prejudiced by the violation of the discovery rule. Thus, under the circumstances of this case, we conclude that the trial court's remedy for the discovery violation did not constitute an abuse of discretion. Reversal on this ground is not required. *Tracey, supra*; cf. *People v Davie*, ___ Mich App ___; ___ NW2d ___ (Docket No. 181537, issued 10/3/97).

Defendant's final pro se issue raises numerous arguments, none of which requires reversal. First, Fourth Amendment rights are personal in nature and cannot be asserted vicariously. *People v Butler*, 193 Mich App 63, 70; 483 NW2d 430 (1992). Thus, defendant lacks standing to challenge the search of another person who was present at 411 Villa Drive when the police executed the search warrant for this premises. *Id*. Next, the previously discussed violation of the MCR 6.201 (the discovery rule) did not constitute a violation of defendant's due process rights. *Tracey, supra*. Next, we have already determined that defendant's convictions were supported by sufficient evidence. Finally, we reject defendant's contention that the cumulative effect of errors requires reversal of his convictions.

Affirmed.

/s/ Robert P. Young, Jr.
/s/ Stephen J. Markman
/s/ Michael R. Smolenski