STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 6, 1999
v	No. 204576 Oakland Circuit Court
REGINALD S. WILLIAMS, Defendant-Appellant.	LC No. 97-150751 FH

Before: Markman, P.J., and Jansen and J.B.Sullivan,* J.J.

PER CURIAM.

Following a jury trial, defendant was convicted of possession with intent to deliver 50 or more but less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii). He was sentenced to 12-1/2 to 20 years' imprisonment. He appeals as of right. We affirm.

Defendant first claims that the trial court abused its discretion in admitting evidence that a drug dog detected traces of cocaine on money taken from his possession. We agree. In *People v Humphreys*, 221 Mich App 443, 447; 561 NW2d 868 ((1997), this Court reiterated the holding of *People v Hubbard*, 209 Mich App 234, 241; 530 NW2d 130 (1995), that drug profile evidence is inadmissible as substantive evidence of guilt, and suggested that dog sniff evidence may be considered such inadmissible drug profile evidence. In *Humphreys*, this Court ultimately determined that admission of testimony regarding dog sniff alerts on the money found on the defendant was error because the testimony had been introduced in rebuttal rather than in the prosecution's case in chief and because it related to a collateral issue. *Id.* In a concurring opinion, Judge Neff cited *United States v $5,000 in US Currency*, 40 F3d 846 (CA 6, 1994), and stated that "[a]n accumulating body of evidence exists that much, if not most, of this country's currency has been tainted by cocaine . . . [rendering] any significance of dog sniff alerts on money . . . de minimus and of no evidentiary value." *Id.*, 453, 454. Notwithstanding that there are jurisdictions which find dog sniff evidence relevant[1], we agree with Judge Neff, and conclude that the admission of dog sniff evidence in the instant case, which was offered as substantive evidence of guilt, was error.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

However, we further conclude that this preserved, nonconstitutional error, *People v Graves*, 458 Mich 476, 483; 581 NW2d 229 (1999), was harmless because it is highly probable that the error did not affect the verdict. First, the jury heard Trooper Collard's admission that he had heard of studies indicating that cash in circulation may be tainted with narcotic odor. Second, the trial court instructed the jury that the dog sniff evidence had "little value as proof" and that the jury "must not convict the defendant based only on the drug dog evidence." Finally, there was more than sufficient admissible evidence of defendant's guilt.

Next, defendant claims that the trial court abused its discretion in admitting testimony that a drug dealer generally would not leave his drugs with someone he did not trust. Defendant argues that this testimony constitutes inadmissible drug profile evidence. *Hubbard, supra.* However, because defendant did not object to the evidence at trial, appellate review is precluded absent a miscarriage of justice. *People v Ramsdell*, 230 Mich App 386, 404; 585 NW2d 1 (1998).[2] Not only did defendant fail to object to the evidence he now challenges, he elicited similar evidence on cross-examination. A party may not harbor error as an appellate parachute. *People v Shuler*, 188 Mich App 548, 552; 470 NW2d 492 (1991). Moreover, even assuming that the challenged testimony did constitute improper drug profile evidence, see *People v Murray*, ___ Mich App ___; ___ NW2d ___ (Docket No. 194761, issued 2/12/99), there is no reasonable probability that the evidence affected the outcome of the trial in light of the other evidence establishing defendant's guilt. *Graves, supra*. Accordingly, a miscarriage of justice has not been shown and reversal is not warranted.

We also reject defendant's claim that the trial court erred in instructing the jury on aiding and abetting. Sufficient evidence was adduced at trial to indicate that more than one person was involved in committing the crime and that defendant's role may have been less than direct participation in the wrongdoing. *People v Bartlett*, 231 Mich App 139, 157; 585 NW2d 341 (1998); *People v Head*, 211 Mich App 205, 211; 535 NW2d 563 (1995). Hence, the trial court did not err in giving the jury the aiding and abetting instruction.

Defendant next claims that the evidence was insufficient to support his conviction because there was no evidence to indicate that he was in possession of the cocaine found at the Nevada Street residence. We disagree. There was sufficient circumstantial evidence linking defendant to the cocaine. Defendant was in a house under investigation as a drug house and crack cocaine was being manufactured in the house, he was present in the room where a large amount of crack cocaine was being manufactured, he was only a step or two away from the cocaine which was in plain view when first spotted by the police, he attempted to flee when confronted by the police, he had a large amount of drug-tainted money in his pocket and was also carrying two beepers, he had loaned his car to co-defendant Charles Williams, a known drug dealer, and Williams was using the car to make a drug sale. Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a rational trier of fact to conclude beyond a reasonable doubt that defendant constructively possessed the drugs found in the Nevada Street residence. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992); *Head, supra* at 209-210.

As to defendant's related claim that the trial court should have granted his motion to quash the information, because we have concluded that sufficient evidence was presented at trial to support

defendant's conviction, any error in the bindover was harmless. *People v Dunham*, 220 Mich App 268, 276-277; 559 NW2d 360 (1996); *People v Meadows*, 175 Mich App 355, 359; 437 NW2d 405 (1989).

Finally, we hold that defendant's 12-1/2 to 20 year sentence does not violate the principle of proportionality. *People v Milbourn*, 435 Mich 630, 635-636, 654; 461 NW2d 1 (1990).

Affirmed.

/s/ Stephen J. Markman
/s/ Kathleen Jansen
/s/ Joseph B. Sullivan

[1] See, e.g., *US v One Lot of US Currency ($36,634)*, 103 F3d 1048, 1055-1056 (CA 1, 1997); *US v Golb*, 69 F3d 1417, 1428 (CA 9, 1995); *US v Saccoccia*, 58 F3d 754 (CA 1, 1995).

[2] Counsel for co-defendant Reginald Somerville objected to the testimony but not on the grounds raised on appeal. An objection on one ground is insufficient to preserve an appellate attack on different grounds. *Meagher v Wayne State University*, 222 Mich App 700, 724; 565 NW2d 401 (1997).