STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 25, 2000
v	No. 209759 Monroe Circuit Court
STEVEN GEORGE ANTEAU, Defendant-Appellant.	LC No. 97-028251 FH

Before: White, P.J., and Sawyer and Griffin, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions following a jury trial of delivery of marihuana, MCL 333.7401(2)(d)(iii); MSA 14.15(7401)(2)(d)(iii), conspiracy to deliver marihuana, MCL 750.157a; MSA 28.354(1), and possession of marihuana, MCL 333.7403(2)(d); MSA 14.15(7403)(2)(d). Defendant was sentenced as a fourth habitual offender, MCL 769.12; MSA 28.1084, and his sentence for possession was enhanced under MCL 333.7413(2); MSA 14.15(7413)(2). Defendant was sentenced to concurrent terms of four to fifteen years' imprisonment for the delivery and conspiracy convictions and one to two years' imprisonment for the possession conviction. We affirm.

I

The Office of Monroe Narcotics Investigation Unit (OMNI) conducted two controlled buys of marihuana through a confidential informant at the home of Trudy Tomecek, defendant's mother, with whom defendant lived. The confidential informant bought marihuana on April 8, 1997 and on April 11, 1997, with prerecorded funds. After the two controlled buys, the police obtained and executed a search warrant at the Tomecek house later in the day on April 11, 1997. Mrs. Tomecek showed police that there was marihuana in a dresser drawer in her bedroom, where three small bags were found inside a larger plastic bag, along with a metal hand-held scale. Two additional bags containing marihuana were found in a gun case in Mrs. Tomecek's bedroom. The prerecorded funds were found on Mrs. Tomecek's person. Mrs. Tomecek was arrested at her home and, after being advised of her *Miranda*[1] rights, made a statement to the police to the effect that the marihuana found in the downstairs bedroom was hers alone, and that defendant had nothing to do with it or with the sale of marihuana from the

home, which involved at most an ounce a week in order to help pay bills owed on the house. The weight of the marihuana sold to the informant, combined with the marihuana seized during the search, was less than 1.2 ounces.

Charges were brought against Mrs. Tomecek and defendant, and their cases were consolidated for trial. However, Mrs. Tomecek entered a guilty plea on the morning of trial, and trial proceeded against defendant alone.

The prosecution's theory of the case was that defendant aided his mother in the sale and delivery of marihuana. Defendant's theory was that his mother acted alone and that there was no conspiracy. The jury found defendant guilty as charged. This appeal ensued.

II

Defendant first argues that the statements Mrs. Tomecek made to police after she was advised of her *Miranda* rights should have been admitted under the statement against interest exception to the hearsay rule, MRE 804(b)(3). Defendant argues that the court's exclusion of this evidence deprived him of a defense and denied him a fair trial. Under the circumstances presented here, we disagree.

We review the trial court's determination to exclude the statements for abuse of discretion. *People v Barrera*, 451 Mich 261, 268-69; 547 NW2d 280 (1996). If a declarant is unavailable as a witness as defined in MRE 804(a), his or her statement against interest is not precluded by the hearsay rule provided that it meets the requirements of MRE 804(b)(3):

> A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability [. . .] that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement. [MRE 804(b)(3).]

The Michigan Supreme Court in *Barrera*, *supra*, analyzed at length this exception to the hearsay rule, with particular focus on the standards for determining whether to admit a statement by a codefendant offered by a defendant as exculpatory evidence. When evaluating a trial court's determination to admit or exclude a statement against penal interest offered under MRE 804(b)(3) to exculpate a defendant, four factors should be considered:

> (1) whether the declarant was unavailable, (2) whether the statement was against penal interest, (3) whether a reasonable person in the declarant's position would have believed the statement to be true, and (4) whether corroborating circumstances clearly indicated the trustworthiness of the statement. [*Barrera*, *supra* at 268; see also *People v Ortiz-Kehoe*, 227 Mich App 508, 517; NW2d (1999).]

The prosecution does not dispute that Tomecek was unavailable under MRE 804(a) because she intended to invoke the Fifth Amendment if called at defendant's trial, see *People v Meredith*, 459 Mich 62, 65-66; 586 NW2d 538 (1998); *Ortiz-Kehoe, supra* at 518, and concedes on appeal that the proffered statements tended to expose Tomecek to criminal liability, see *Barrera, supra* at 269-272. The prosecution argues that the trial court properly excluded the statement because the circumstances did not sufficiently indicate the trustworthiness of the statements, and because the statements were not so crucial to defendant's defense to warrant admission, given the absence of adequate indicia of trustworthiness.

The determinations whether a reasonable person in the declarant's shoes would have believed the statement to be true and whether circumstances sufficiently indicated the trustworthiness of the statement depend in part on the trial court's findings of fact, which we review for clear error, and in part on its application of the legal standard to those facts, which we review for abuse of discretion. *Id.* at 269.

> In exercising its discretion, the trial court must conscientiously consider the relationship between MRE 804(b)(3) and a defendant's constitutional due process right to present exculpatory evidence. Likewise, appellate review necessarily requires a review of the importance of the statement to the defendant's theory of defense in determining whether the trial court abused its discretion by excluding the evidence. [*Id.*]

The *Barrera* Court noted regarding the requirement that exculpatory statements must be trustworthy that

> the rule [MRE 804(b)(3)] "does not require that the statements themselves be clearly corroborated." *United States v Garcia*, 986 F2d 1135, 1141 (CA 7, 1993). We make a further preliminary observation that federal courts are split over whether the court must assess the credibility of the witness, or of the declarant, or of only the statement. We believe that the credibility of the declarant inherently affects the trustworthiness of the statement, and therefore it is not inappropriate for a court to exclude a statement where the declarant's veracity is seriously doubtful or entirely lacking. *United States v Moore*, 936 F2d 1508, 1517 (CA 7, 191); *United States v McDonald*, 688 F2d 224, 233 (CA 4, 1982); [*United States v*] *Satterfield*, 572 F2d [687,] 692 [(CA 9, 1978)].
>
> Therefore, we are faced with two remaining questions respecting the corroborating circumstances requirement: (1) what facts may a judge properly consider, and (2) what level of corroboration is necessary?
>
> APPROPRIATE FACTORS
>
> There is no clear rule in the federal cases regarding which factors should be considered. Fundamentally, the determination of trustworthiness invokes 'two distinct elements . . . .

> [T]he statement must actually have been made by the declarant, and it must afford a basis for believing the truth of the matter asserted." [*United States v*] *Bagley*, 537 F2d [162,] 167 [(CA 5, 1976)].
>
> We also note that MRE 104(a) provides that, in determining the admissibility of evidence, the trial court generally "is not bound by the Rules of Evidence," which supports a broad scope of permissible considerations. Although the defendant's statement may often be self-serving, we believe that the trial court may consider it as a factor of corroboration if appropriate. [*United States v*] *Slaughter*, 891 F2d [691,] 698 [(CA 9, 1989)].

In determining whether the statement against interest was sufficiently reliable in *Barrera*, the Court applied the totality-of-the-circumstances test enunciated in *People v Poole*, 444 Mich 151; 506 NW2d 505 (1993):

> . . . . courts must evaluate the circumstances surrounding the making of the statement as well as its content.
>
> The presence of the following factors would favor admission of such a statement: whether the statement was (1) voluntarily given, (2) made contemporaneously with the events referenced, (3) made to family, friends, colleagues, or confederates--that is, to someone to whom the declarant would likely speak the truth, and (4) uttered spontaneously at the initiation of the declarant and without prompting or inquiry by the listener.
>
> On the other hand, the presence of the following factors would favor a finding of inadmissibility: whether the statement (1) was made to law enforcement officers or at the prompting or inquiry of the listener, (2) minimizes the role or responsibility of the declarant or shifts blame to the accomplice, (3) was made to avenge the declarant or to curry favor, and (4) whether the declarant had a motive to lie or distort the truth. [*Barrera, supra* at 274-275, quoting *Poole, supra* at 165.]

With respect to custodial statements, the *Barrera* Court found useful the three-factor inquiry of *Garcia*, *supra* at 1140:

> Under that test, the court should first consider "the relationship between the confessing party and the exculpated party and . . . [whether] it was likely that the confessor was fabricating his story for the benefit of a friend. Thus, if the two involved parties do not have a close relationship, one important corroborating circumstance exists." The second factor is "whether the confessor made a voluntary statement after being advised of his *Miranda* rights." The third is "whether there is any evidence that the statement was made in order to curry favor with authorities." [*Barrera*, *supra* at 275.]

Regarding the extent of corroboration required, the *Barrera* Court noted:

> . . . the defendant's constitutional right to present exculpatory evidence in his defense and the rationale and purpose underlying MRE 804(b)(3) of ensuring the admission of reliable evidence must reach a balance. We believe they may be viewed as having an inverse relationship: the more crucial the statement is to the defendant's theory of defense, the less corroboration a court may constitutionally require for its admission. . . .
>
> . . . the constitutional background of this balancing test must be of foremost consideration. Because there can be no bright-line rule in this area, resolution must be case by case. But, as Justice Holmes observed, "Experience, logic and common sense" should guide us in reaching a point where the appellate court will find that the trial court abused its discretion by excluding the exculpatory evidence. [*Barrera, supra* at 279.]

B

During defense counsel's cross-examination of Detective Davis, he testified that Tomecek made a statement to him after he read her *Miranda* rights. The prosecution objected on grounds of hearsay and lack of trustworthiness. The trial court excluded the statements.

Before Davis testified, the prosecution had presented the testimony of the confidential informant (CI), defendant's sister, and several police officers involved in the controlled buys or the search of Tomecek's house. We briefly summarize their testimony to place the trial court's decision to exclude Tomecek's statements in context.

The CI testified that she saw defendant on April 8, 1997, along with his mother, at the Tomecek house. She testified that she asked Tomecek if she had anything, meaning marihuana, Tomecek said yes, and the three of them (Tomecek, defendant and the CI) went to Tomecek's bedroom, to a dresser. The CI testified that she believed that defendant opened the dresser drawer, took two bags of marihuana out, and handed the CI one of them, after taking a marihuana stem out of one bag and adding marihuana from the other bag to it. The CI testified that she asked if there would be anything more available during the week and that Tomecek said there would be, late Thursday night or Friday morning. The CI testified that she believed she paid $40.00, she left with the marihuana in her pocket, and she got into Detective Wassus' car and turned the marihuana over to him.

She testified she returned to the Tomecek house on Friday, April 11, 1997, with Detective Wassus, whom she had been instructed to call cousin George. Wassus stayed in the kitchen while she and Tomecek went to Tomecek's bedroom. The CI told Tomecek she wanted ¼ ounce of marihuana and Tomecek looked in her gun case and it was not there. Tomecek told the CI that she had a half ounce that she did not want to break up, and they both walked out of the bedroom to the kitchen. Tomecek asked defendant, who was in the kitchen, where "it" (presumably, the marihuana) was and defendant said it was in the top dresser drawer. The two women returned to the bedroom and Tomecek got a bag of marihuana from the dresser drawer and gave it to the CI. The CI testified that she gave Tomecek a total of $90 for the ½ ounce, $30.00 of which she got from Wassus in the kitchen and handed to Tomecek in the kitchen.

The CI testified that she participated in the controlled buys as a favor for her friend, Judy Smith, who formerly lived at the Tomecek's. She testified that Smith had a son who was very ill and another child, and had been caught selling marihuana in Monroe County while on probation in Wayne County for selling marihuana. Smith told the CI that the police threatened to take her children away, and the CI testified that she therefore "ended up helping her out." The CI testified that in exchange for her assistance, the Monroe County possession of marihuana charge against Judy Smith was dropped. The CI testified on cross-examination that she had been to the Tomecek house before the controlled buys to visit Smith, and that Smith had moved out of the Tomecek house "a week or so before this went down." On further cross-examination, the CI testified that she was no longer friends with Smith and that Smith had "suckered" her into helping her.

Detective Wassus testified regarding the April 11, 1997 controlled buy that while he and defendant were sitting at the kitchen table in the Tomecek house, Mrs. Tomecek asked defendant where her "shit" was, and that defendant responded that it was in her dresser drawer. Wassus testified that he asked defendant what "that" was about, and that defendant told him that his mother's boyfriend often took her stuff, so she hides it and then cannot remember where she put it.

Defendant's sister, Stacy Anteau, testified that she was Tomecek's daughter and that she had been at her mother's house for about twenty minutes when the police arrived with a search warrant on April 11, 1997. She testified that she saw a marihuana bag on the kitchen table , at which she was sitting with her mother and defendant, and that her mother had pulled the bag out and put it on the table to see how much was there.

> Q Okay, was there any discussion going on between the two of them about that particular marihuana when you were there?
>
> A Well Steven had wanted a joint to smoke and she was telling him that they didn't have enough to smoke, only what they had to sell.
>
> MR. JONES: I'm going to object to what the mother said, your Honor.
>
> [The trial court overruled the objection, finding the statement admissible because it was in furtherance of a conspiracy.]

Detective Davis testified that Tomecek made the statements at issue to him. His testimony sheds some light on the circumstances surrounding the making of the statements:

> Q Okay, what type of observations did you make [after entering the Tomecek house to execute the warrant]?
>
> A I observed when we first entered into the residence Trudy Tomecek and Stacy Anteau [Tomecek's daughter] were seated in the kitchen at the kitchen table, drinking coffee, and once we started searching the residence, I observed marihuana packaged in the dresser drawer of the bedroom [Tomecek's], also observed marihuana in the gun case with the shotgun [in Tomecek's bedroom]

* * *

I did not personally search all of the dressers. I looked through some of the dresser drawers. Trudy Tomecek showed me where the marihuana was at the initial, when I entered into the residence.

* * *

Q Were you responsible for serving a forfeiture notice to Trudy Tomecek?

A I believe I did, yes sir.

Q That's to take the house where all of this happened?

A That was done through the Circuit Court system, sir.

* * *

Q Mrs. Tomecek was arrested on the afternoon of the 11th of April, is that right?

A Yes sir, she was.

Q You informed her of what is commonly known as her Miranda rights, is that right?

A Yes sir, she was read her Miranda.

Q That was at her home?

A Yes sir.

Q That tells her essentially that she has the right to remain silent, anything she says can and will be used against her?

A Yes sir.

Q That sort of thing?

A Yes sir.

Q And did she thereafter give you a statement

A Yes, she gave me a statement, yes sir.

Q And in that she told you . . .

MR. SWINKEY [*prosecutor*]: I object, your Honor. He's asking for what is patently hearsay, and inadmissible in this Court.

THE COURT: Counsel, would you approach the bench please?

Defense counsel in an offer of proof stated that based on Detective Davis' report, he expected Davis to testify:

> He will say that Mrs. Tomecek told him that the marihuana located in the bedroom downstairs was all hers, she stated that Steve Anteau, her son, had nothing to do with it. Mrs. Tomecek says she sells marihuana from her residence to help pay the bills. She stated that the four plants on the television was marihuana she was trying to grow. Mrs. Tomeck [sic] says she never sells more than an ounce a week, Mrs. Tomecek says she is the only one selling marihuana out of the house. Mrs. Tomecek was asked why she was trying to sell her house [sic? from her house?] and she said she was behind on her taxes, she said she's about three years behind. Mrs. Tomecek said the house was paid for but she owes at least $2300 in back taxes. Mrs. Tomecek was asked how much marihuana was at the house, she stated whatever you found. Mrs. Tomecek denied having any knowledge of Steve Anteau or her other son, Eric Shaftner, selling marihuana from the residence.

In response to the prosecution's argument that the statement was untrustworthy, defense counsel argued:

> All of the evidence that we have heard in here and we've dragged out all baggie after baggie, and photograph after photograph primarily dealing with Trudy Tomecek's bedroom. We've had [the confidential informant] as she then was, come in here and say she went to the house and she bought marihuana on two occasions from Trudy Tomecek. This case has as much circumstantial corroboration of the trustworthiness of this statement as any case, anyone is likely to find and I find it frankly somewhat disconcerting that the Prosecuting Attorney is attempting to put that evidence in to attack my client . . . when it is equally vigorous in supporting the admissibility of Mrs. Tomecek's statement.

The court recessed and, on returning, discussed jury instructions with counsel. Defendant then requested to represent himself, with standby counsel, and a long discussion took place. The trial court granted the request. The trial court later returned to the issue of Tomecek's statements to the police, and concluded that it would preliminarily exclude the statement on the basis of trustworthiness:

> . . . . the Court must conscientiously, and this is [*Barrera* at] 269, consider the relationship between the rule of evidence 804(b)(3) and the defendant's constitutional due process right to prevent or present exculpatory evidence . . . It would certainly portions of the statement made by Mrs. Tomecek were against her penal interest this is made is it at about the time the search warrant is being executed?
>
> MR. SWINKEY: Subsequent to that.

THE COURT: At the jail is it?

MR. SWINKEY: No, it was at the house.

THE COURT: I was told the Miranda warnings were given. . . . The Court goes on to talk about the trustworthiness of the statement. It says MRE 804(b)(3) further requires the exculpatory statement must be trustworthy . . . .

* * *

Well what do have, we have a statement, defendant who appears from from [sic] we know is the owner of a house, but she says in effect to the officer, I did it, it was my marihuana, my son didn't know anything about it, I'm involved, something of that affect [sic]. Am I correct on it, or perhaps would it be better paraphrased, Mr. Swinkey, Mr. Anteau?

MR. ANTEAU: She said no one in the house except herself that includes everybody living there, but beyond that, no. So it would not simply exculpate me, it was my brother, whoever else may have been living at there [sic]. At this time there's a possibility of other people.

THE COURT: . . . .

All of the things I must consider, it appears to this court while the statement certainly implicated her, it really isn't totally corrobated [sic] in that we have the sister there, we have police, we have, it's not received in evidence yet, and so maybe I'm being premature on that, a fingerprint of the defendant. . . . . all of the evidence I have heard, to this point I do not believe that there should be an exception to 804, the subsection quoted. If you want to raise that again you may. When I've heard more evidence we'll see if there is anything in here that ought to change it . . .

The record discloses that the proffered statements were made after Tomecek was advised of her *Miranda* rights, contemporaneous with the events in question, and that Tomecek did not try to shift blame or minimize her own responsibility. There is insufficient information in the record to enable a determination whether Tomecek made the statements spontaneously and on her own initiative, although there is no evidence that she was prompted and the prosecution does not so argue. Nor is there evidence that she was trying to curry favor with the authorities.

There is no question that Tomecek made the statements at issue. Further, Tomecek's statements were central to the defense because defendant's theory was that Tomecek made the deals, that she owned the marihuana that was seized, and that he was not involved in the conspiracy. Moreover, defendant did not testify, and an important piece of evidence for the prosecution was Stacy's account of Tomecek's answer to defendant's request to smoke the marihuana. On the other hand, the mother-son relationship between the declarant and defendant weighs against admissibility, as

does the fact that Tomecek made her statements to the police. In addition, Tomecek had motive to distort the truth—to protect her son, who was on probation at the time, from criminal prosecution.

We conclude that the trial court's factual findings were not clearly erroneous, and the court did not abuse its discretion. At the time defendant sought to proffer Tomecek's statements, the CI had testified that defendant was involved in the first sale to the extent that he removed two marihuana bags from his mother's dresser drawer, and took some marihuana out of one bag and placed it in another. The CI testified regarding the second controlled buy that Tomecek asked defendant where she had put "it" and defendant told her it was in her dresser drawer. The CI testified that she and Tomecek then returned to Tomecek's bedroom and Tomecek got a marihuana bag out of the dresser drawer. Defendant's sister had testified that defendant had asked Tomecek whether he could have some marihuana to smoke and that Tomecek replied that "they" only had enough to sell. Under these circumstances, we cannot say that the trial court abused its discretion in excluding Tomecek's statements exculpating defendant on the basis that they were insufficiently trustworthy.

III

Defendant next argues that the trial court improperly prevented him from cross-examining the confidential informant concerning previous uncontrolled purchases of marihuana, denying him his rights to confrontation and a fair trial. We disagree.

We review a trial court's determination of the scope of cross-examination for abuse of discretion. *People v Lucas*, 188 Mich App 554, 572; 470 NW2d 460 (1991). "Neither the Sixth Amendment's Confrontation Clause nor due process confers on a defendant an unlimited right to cross-examine on any subject. Cross examination may be denied with respect to collateral matters bearing only on general credibility, as well as on irrelevant issues." *People v Canter*, 197 Mich App 550, 564; 496 NW2d 336 (1992) (citations omitted).

During the preliminary examination, defense counsel asked the CI if she had ever purchased marihuana from the Tomecek residence prior to April 8, 1997, the day of the first controlled buy. The prosecution objected, arguing that it was inappropriate to ask the witness to incriminate herself. The court instructed the CI regarding her Fifth Amendment rights at which time the CI invoked her right not to incriminate herself. The CI then testified, however, that she had been to Tomecek's house four or five times in the past. At trial, the prosecution objected when defendant asked the CI whether she had purchased marihuana from the Tomecek residence before the controlled buys, arguing, outside the jury's presence, that it was improper to ask a witness a potentially incriminating question that was not relevant to the case. Defense counsel responded that the question was appropriate to allow the jury to judge the CI's credibility.

After hearing argument, the trial court denied defendant the opportunity to cross-examine the CI regarding marihuana dealings that may have taken place outside of the immediate time frame of the controlled buys, concluding that such dealings would be irrelevant. The trial court allowed defense counsel to make an offer of proof, during which the CI testified that she had last visited the Tomecek residence a week or two before April 8, 1997, to visit Smith.

Defendant relies on *Davis v Alaska*, 415 US 308; 94 S Ct 1105; 39 L Ed 2d (1974), to support his argument that his inability to cross-examine the CI regarding past purchases of marihuana at the Tomecek residence violated his right of confrontation and denied him a fair trial. Defendant's reliance on *Davis* is misplaced. In *Davis*, the United States Supreme Court held that the defendant was entitled to cross-examine a key prosecution witness regarding his vulnerable parole status and his fear that he might have been considered a suspect in the same crime for which he was testifying against the defendant. *Id.* at 318-319.

Here, the CI's parole status, if any, was not raised at trial. Therefore, defendant's argument that she could have been testifying against defendant to protect herself is not supported by the evidence. Further, the CI testified that her motive for assisting the police was to help her friend, Judy Smith. Defendant had unrestricted opportunity to, and did, cross-examine the CI regarding her stated motives for cooperating with the police. Defendant's allegation that the CI may have had some other unspecified bias for testifying against defendant is without support. Therefore, defendant was not denied the right of confrontation with respect to the CI's motives for testifying. *People v Canter*, 197 Mich App 550, 564; 496 NW2d 336 (1992).

Regarding the specific question whether the CI previously purchased marihuana from the Tomecek residence, the trial court properly ruled that it was a matter of relevancy. Under the Michigan Rules of Evidence, relevant evidence is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401. Although the line of inquiry might bear on the CI's credibility in general, the trial court may restrict cross-examination with respect to collateral matters bearing only on general credibility. *Canter, supra* at 564. Accordingly, the trial court did not abuse its discretion in restricting defendant's cross-examination of the CI.

IV

Defendant last argues that the trial court abused its discretion by denying his motion in limine to exclude fingerprint evidence, given the lack of foundation for that evidence, its relative lack of probative value, and its prejudicial effect. We disagree.

We review a trial court's evidentiary decisions for abuse of discretion. *People v Brownridge*, 459 Mich 456, 460; 591 NW2d 26 (1999).

The baggies containing marihuana sold to the confidential informant on April 8 and April 11, 1997 were not analyzed for fingerprints. The fingerprint at issue appeared on one of the baggies seized in the raid of Tomecek's home that took place after both controlled buys, on April 11, 1997.

The trial court ruled that the print was admissible based on it having been found on a bag that contained marihuana and that the weight of the evidence was a question for the jury.

Both parties cite *People v Willis*, 60 Mich App 154; 230 NW2d 353 (1975), in support of their arguments. In *Willis*, this Court noted:

. . . . The general rule concerning conviction by fingerprints *alone* was adopted by this Court in *People v Ware*, 12 Mich App 512, 515; 163 NW2d 250 (1968):

> "To warrant a conviction [based on fingerprint evidence alone], the fingerprints corresponding to those of the accused must have been found in the place where the crime was committed under such circumstances that they could only have been impressed at the time the crime was committed." [60 Mich App at 159.]

In *Willis*, a metal candy box was found in the backyard of a burglarized residence. A fingerprint lifted from the box matched the defendant. The defendant contended that his fingerprints could have innocently been placed on the box either before or after the burglary and that the prosecution had the burden of rebutting the presumption that his fingerprints were not innocently placed on the candy box. *Willis, supra* at 156-158. This Court held:

> The box from which the latent fingerprint was taken had been kept in a bureau drawer in the owner's house for over a year, ever since the box had been received as a gift from a friend. Whether Willis could reasonably have touched the box prior to its coming into the possession of its present owners in such a way that his fingerprint would remain was a jury question. Similarly, whether Willis innocently touched the box after the burglary, given the limited three-hour period the victims were away from their home and the close proximity of the box to the house, was also a question to be answered by the trier of fact. [*Id.* at 159. See also *People v Barnes*, 51 Mich App 735, 737; 216 NW2d 464 (1974), and *People v William Hill*, 34 Mich App 669, 672; 192 NW2d 84 (1971), holding that weight to be given fingerprint evidence is a jury question.]

Here, defendant argues that the plastic bag is a common household item and because defendant was a member of the household, it is very possible that the fingerprint was placed on the bag under innocent circumstances. The fact remains, however, that the print was found on a plastic bag that contained marijuana. Moreover, the CI testified that she witnessed defendant remove plastic bags containing marijuana from Tomecek's dresser drawer. Given this evidence, we can conclude that the trial court did not abuse its discretion in admitting the fingerprint evidence. *Willis, supra* at 159.

Affirmed.

/s/ Helene N. White
/s/ David H. Sawyer
/s/ Richard Allen Griffin

[1] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).