STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 13, 2000
v	No. 217448 Schoolcraft Circuit Court
WAYNE ROGER SIEWERT, Defendant-Appellant.	LC No. 98-006167-FH

Before: Hood, P.J., and Saad and O'Connell, JJ.

PER CURIAM.

Following a bench trial, the court convicted defendant of manufacturing two hundred or more marijuana plants, MCL 333.7401(2)(d)(ii); MSA 14.15(7401)(2)(d)(ii), possessing a firearm within five years of the date his parole terminated, MCL 750.224f(2); MSA 28.421(6), and possessing less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v). The trial court sentenced defendant to concurrent terms of seven to twenty-five years' imprisonment for the manufacturing of marijuana plants conviction, three to ten years' imprisonment for the firearm possession conviction, and three to eight years' imprisonment for the cocaine possession conviction. Defendant appeals as of right, and we affirm.

Defendant says that the trial court committed clear legal error when it determined that defendant consented to the search of his trunk. We disagree.

Both the United States and Michigan constitutions guarantee the right to be free of unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11. Generally, a search without a warrant is considered unreasonable unless it falls within one of the few well-defined exceptions to the warrant requirement. *Illinois v Rodriguez*, 497 US 177, 181; 110 S Ct 2793; 111 L Ed 2d 148 (1990); *People v Martinez*, 192 Mich App 57, 61-62; 480 NW2d 302 (1991). Consent is such an exception. *Schneckloth v Bustamonte*, 412 US 218, 248; 93 S Ct 2041; 36 L Ed 2d 854 (1973); *People v Borchard-Ruhland*, 460 Mich 278, 294; 597 NW2d 1 (1999). We assess the totality of the circumstances to determine whether consent to search is freely and voluntarily given. *Schneckloth*, *supra* at 248; *Borchard-Ruhland*, *supra* at 294.

Defendant contends that the trial court erred in finding that he handed State Trooper Jay Peterson the keys to the car and thereby consented to a search of the trunk. Defendant cites the testimony of Becky Nurnis, as well as his own, that Trooper Peterson pulled the keys from the car's ignition, rather than receiving them from defendant. Defendant urges this Court to disregard Trooper Peterson's testimony that defendant handed him the keys to the car, and credit only defendant's and Nurnis' versions of the events.

A trial court's findings of fact will not be set aside unless they are clearly erroneous. MCR 2.613(C). A finding is clearly erroneous if this Court is left with a definite and firm conviction that a mistake has been made. *Davidson v Bugbee*, 227 Mich App 264, 268; 575 NW2d 574 (1997). The trial court's factual finding that defendant handed Trooper Peterson the keys to the car was not clearly erroneous. Trooper Peterson specifically testified that defendant handed him the car keys. Furthermore, based on the testimony presented at the suppression hearing, specifically that Nurnis lied to the police about when she rented the car and how much she had been driving the car, the court was fully justified in finding that Nurnis was not credible and that she would lie in order to protect defendant. Moreover, Trooper Dorenbecker testified that when he asked defendant about the source of the $5,000 that Trooper Peterson found in the trunk, defendant changed his story three times. As a result, the court was equally justified in discrediting defendant's testimony. The trial court was free to conclude that Trooper Peterson testified truthfully, *People v Dinsmore*, 103 Mich App 660, 671; 303 NW2d 857 (1981), and we are not left a definite and firm conviction that the trial court committed a mistake in finding that defendant handed the car keys to Trooper Peterson.

Moreover, under the totality of the circumstances, the trial court properly found that defendant consented to a search of the trunk. Defendant does not dispute that he gave Trooper Peterson permission to search the interior of the car. After having already consented to a search of the car, defendant then provided Trooper Peterson with the only tool he needed to access the trunk – the key. Implicit in defendant's act of handing over the keys was that Trooper Peterson was free to search the entire car.[1]

Defendant also contends erroneously that the affidavit which supported the warrant to search his residence contained impermissibly conclusory statements. A review of the entire affidavit reveals many details of the traffic stop, including that: (1) defendant could not sufficiently account for the source of the $5,000; (2) defendant stated that he owned his own company, and (3) he used his scales to weigh cannabis. The affiant also stated that a review of Department of Treasury records did not indicate that defendant had reported any income from his alleged business activity, or income from any source, in over four years. We note that in *People v Darwich*, 226 Mich App 635; 575 NW2d 44 (1997), a similar issue confronted this Court and this Court determined that "an affiant's representations in a search warrant affidavit that are based upon the affiant's experience can be considered along with all the other facts and circumstances presented to the examining magistrate in determining probable cause." *Darwich*, *supra* at 639.

Additionally, defendant avers that the information supporting the warrant was stale. When a defendant claims that information in support of the warrant is stale, we ask – did the issuing magistrate have a substantial basis to believe that a fair probability existed that either contraband or evidence

would be present at the place to be searched. "Staleness" is one factor that courts should weigh in determining if probable cause exists to issue a search warrant. *People v Russo*, 439 Mich 584, 602; 487 NW2d 698 (1992); *People v Stumpf*, 196 Mich App 218, 226; 492 NW2d 795 (1992). In *Stumpf*, this Court remarked:

> The age of the information alone is not determinative, but must be evaluated as part of the particular circumstances of the case. The circumstances will vary depending upon such factors as "whether the crime is a single instance or an ongoing pattern of protracted violations, whether the inherent nature of a scheme suggests that it is probably continuing, and the nature of the property sought, that is, whether it is likely to be promptly disposed of or retained by the person committing the offense." [*Stumpf*, *supra* at 226, quoting *Russo*, *supra* at 605-606. Citations omitted.]

The *Stumpf* Court upheld the validity of a warrant that was issued approximately two and one-half weeks after the police gathered the information contained in the supporting affidavit. *Stumpf*, *supra* at 226. "The circumstances of the suspected criminal enterprise included the growing of marijuana at defendant's residence, not simply the possession of a specific quantity of drugs, but an ongoing criminal activity. Because plants require time to germinate and grow, the evidence was not likely to have dissipated despite the passage of time." *Id*. at 226-227.

Here, police suspected that defendant was selling narcotics based on the fact that he could not account for the $5,000 cash that was in his trunk and his admission that at some point he had used the scales to weigh cannabis. Moreover, defendant told police officers that he owned his own business, but treasury records did not indicate that defendant reported any income whatsoever during the previous four years. As in *Stumpf*, the police suspected that defendant was engaging in continuous, ongoing illegal activity, namely the sale of narcotics and tax evasion. This was not a case in which the police sought to recover evidence of a single drug transaction. Therefore, we conclude that the issuing magistrate had a substantial basis to believe that a fair probability existed that evidence of drug activity or tax evasion would be present in defendant's residence on the date the warrant issued.

Defendant also argues that the evidence adduced at trial was insufficient to support defendant's conviction of possessing less than twenty-five grams of cocaine. Specifically, defendant contends that the prosecution failed to establish that he was in possession of the cocaine residue that the police found in a jewelry box and the cocaine found inside a jar located in another bedroom of defendant's house. In *People v Fetterley*, 229 Mich App 511; 583 NW2d 199 (1998), this Court explained the test for possession of a controlled substance:

> A person need not have physical possession of a controlled substance to be found guilty of possessing it. Possession may be either actual or constructive, and may be joint as well as exclusive. The essential question is whether the defendant had dominion or control over the controlled substance. A person's presence at the place where the drugs are found is not sufficient, by itself, to prove constructive possession; some additional link between the defendant and the contraband must be shown.

> However, circumstantial evidence and reasonable inferences arising from the evidence are sufficient to establish possession. [*Id*. at 515. Citations omitted.]

Accordingly, the question here is did the prosecution present sufficient evidence to establish that defendant had dominion or control of the cocaine that the police recovered in his residence. *People v Wolfe*, 440 Mich 508, 513-514; 489 NW2d 748 (1992); *Fetterley*, *supra* at 515.

Viewing the evidence in a light most favorable to the prosecutor, a rational trier of fact could find that defendant exercised dominion or control over the cocaine. *Wolfe*, *supra* at 513-514. Defendant's mother testified that although she owned the house, her son, the defendant, lived there. Officer Mathias Munger testified that during a raid of the house he recovered a telephone bill that was addressed to defendant. Sexton testified that he recovered $2,000 in cash, which defendant admitted belonged to him, from the same jewelry box where officers discovered two vials containing a white residue. The jewelry box was located in defendant's bedroom. This evidence supports a finding that defendant had dominion and control of the entire house, including the rooms where the cocaine was found. A rational trier of fact could conclude that if defendant had control of the house, he also had dominion and control over the jar of cocaine that was sitting on a table in one of the bedrooms, and that he had dominion and control of the vials containing what appeared to be cocaine residue which were in a jewelry box with defendant's cash. Therefore, we conclude that sufficient evidence existed to support the trial court's finding that defendant was in possession of the cocaine.

Defendant also says that the evidence adduced at trial was insufficient to establish that defendant possessed more than two hundred marijuana plants. It is defendant's position that because some of the marijuana plants that the police discovered were only an inch tall, they were mere seedlings, rather than "plants." Resolution of the issue involves a matter of statutory interpretation which we review de novo. *People v Rodriguez*, 236 Mich App 568, 570; 601 NW2d 134 (1999); *People v Williams*, 236 Mich App 610, 612; 601 NW2d 138 (1999).

MCL 333.7401; MSA 14.15(7401) provides:

> (2) A person who violates this section as to:
>
> * * *
>
> (d) Marihuana or a mixture containing marihuana is guilty of a felony punishable as follows:
>
> * * *
>
> (i) If the amount is 45 kilograms or more, or 200 plants or more, by imprisonment for not more than 15 years or a fine of not more than $10,000,000.00, or both.

The definition of the term "plant," as used in the section, is contained in MCL 333.7401(5)(b); MSA 14.15(7401)(5)(b), which states that "'[p]lant' means a marihuana plant that has produced cotyledons or a cutting of a marihuana plant that has produced cotyledons." The term "cotyledon" is not defined in the statute. Where a statute leaves a term undefined, courts may consult dictionary definitions. *People v Lee*, 447 Mich 552, 558; 526 NW2d 882 (1994); *People v Bobek*, 217 Mich App 524, 529; 553 NW2d 18 (1996). *Random House Webster's Unabridged Dictionary* (2d ed, 1998), 459, defines cotyledon as "the primary or rudimentary leaf of the embryo of seed plants."

Officer Munger testified that the plants he recovered ranged between 1½inches to 1½feet in height. Moreover, photographs of the marijuana plants offered by the prosecution revealed that the plants in question had produced cotyledons. The photographs show that all the plants had sprouted leaves beyond the primary or rudimentary leaf of the seed's embryo. Therefore, viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could find beyond a reasonable doubt that defendant manufactured two hundred or more marijuana plants.

Affirmed.

/s/ Harold Hood
/s/ Henry William Saad
/s/ Peter D. O'Connell

[1] Defendant also asserts that any consent was coerced. Defendant failed to raise this contention before the trial court. Therefore, the argument is unpreserved for appeal. *People v Mayhew*, 236 Mich App 112, 121; 600 NW2d 370 (1999).