

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

CECIL LONNIE PULLIAM,

Defendant-Appellant.

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UNPUBLISHED

October 16, 2001

No. 223405

Saginaw Circuit Court

LC No. 98-015820-FH

Before: K. F. Kelly, P.J., and Murphy and Fitzgerald, JJ.

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), and possession of a firearm during the commission of a felony, MCL 750.227b(1). He was sentenced to ten to twenty years' imprisonment for the possession with intent to deliver conviction and a consecutive two-year term for the felony-firearm conviction. He appeals as of right. We affirm.

Defendant first argues that the trial court erred by denying his motion to suppress evidence seized from the apartment where he was arrested. The trial court's factual findings are reviewed for clear error. *People v Attebury*, 463 Mich 662, 668; 624 NW2d 912 (2001). Clear error exists where this Court is left with the definite and firm conviction that a mistake has been made. *People v Parker*, 230 Mich App 337, 339; 584 NW2d 336 (1998). However, the trial court's application of constitutional standards is not afforded such deference. *People v Oliver*, 464 Mich 184, 191; 627 NW2d 297 (2001); *People v Stevens (After Remand)*, 460 Mich 626, 631; 597 NW2d 53 (1999). We review de novo the trial court's ultimate decision on a motion to suppress evidence. *Parker, supra* at 339.

We conclude that the trial court correctly denied defendant's motion to suppress. Defendant lacked standing to challenge the search. The right to be free from unreasonable searches and seizures is personal, and it may not be invoked by third parties. *People v Zahn*, 234 Mich App 438, 446; 594 NW2d 120 (1999). Thus, in order to have standing to challenge a search, a defendant must have a legitimate expectation of privacy in the place searched that society recognizes as a reasonable one. *People v Powell*, 235 Mich App 557, 560; 599 NW2d 499 (1999). Here, defendant admitted that he did not reside at the apartment, but that his brother's girlfriend did. Defendant argues that the prosecutor failed to show that he was not an overnight guest, which would confer standing. An overnight guest at a residence does have a legitimate expectation of privacy that confers standing to challenge a search of the residence.

*Minnesota v Olson*, 495 US 91, 96-97; 110 S Ct 1684; 109 L Ed 2d 85 (1990); *Parker, supra* at 340. However, a mere visitor does not. *Minnesota v Carter*, 525 US 83, 90; 119 S Ct 469; 142 L Ed 2d 373 (1998); *Parker, supra* at 340-341. In this case, the record shows that defendant was, at best, a mere visitor at the apartment. Thus, he did not have standing to challenge the search. Although defendant claims that the prosecutor failed to show that he was not an overnight guest, this claim ignores that defendant bore the burden of establishing standing. *Powell, supra* at 561. The trial court correctly concluded that defendant lacked standing.

Next, defendant argues that the prosecutor presented insufficient evidence to support his convictions. Because challenges to the sufficiency of the evidence implicate the constitutional right to due process, we review this issue de novo. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). We view the evidence in the light most favorable to the prosecutor to determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Wherever possible, we defer to the jury verdict, drawing all reasonable inferences and making all credibility choices in favor of it. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

We conclude that defendant's convictions were supported by sufficient evidence. Defendant argues that the prosecutor failed to prove that he knowingly possessed the cocaine and failed to prove that he intended to deliver it to others. However, defendant was the only person in an apartment from which several rocks of crack cocaine were thrown from a window. This was enough to allow the jury to conclude that defendant knowingly possessed the cocaine. Defendant's attempt to conceal the evidence, coupled with his presence in the apartment, was sufficient evidence of possession. *Wolfe, supra* at 522-523; *People v Vaughn*, 200 Mich App 32, 34-36; 504 NW2d 2 (1993). Moreover, the prosecutor presented expert testimony that some of the cocaine had been cut into smaller rocks for street-level sales. A razor blade with white, powdery substance was found in the apartment. No drug-use paraphernalia was found. Thus, the jury could infer that defendant was engaged in the very act of cutting the cocaine into rocks for delivery, when he was alerted to police presence and threw the cocaine out of the window. This was sufficient evidence of intent to deliver. *Wolfe, supra* at 524-525. Finally, the prosecutor presented sufficient evidence that defendant possessed a firearm during the commission of a felony. There were three loaded firearms readily accessible to defendant while he possessed the cocaine. *People v Hill*, 433 Mich 464, 470; 446 NW2d 140 (1989); *People v Williams (After Remand)*, 198 Mich App 537, 541; 499 NW2d 404 (1993). Whether defendant owned the firearms or resided at the apartment is irrelevant. *People v Burgenmeyer*, 461 Mich 431, 436; 606 NW2d 645 (2000); *People v Daniel*, 207 Mich App 47, 50-51; 523 NW2d 830 (1994). Furthermore, we reject defendant's claim that he was denied due process of law by even being charged with felony-firearm. There was ample evidence to support the charge and the conviction.

Next, defendant argues that he was denied a fair trial by the introduction of drug profile testimony. We disagree. Defendant, having failed to preserve this issue by a contemporaneous objection, must demonstrate plain error affecting his substantial rights in order to avoid forfeiture of this issue. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Defendant has failed to show plain error. Most of the challenged testimony related to the significance of the cocaine and firearms seized. This was proper testimony. *People v Ray*, 191 Mich App 706, 707-

708; 479 NW2d 1 (1991). Only one part of the police officer's testimony may properly be characterized as drug-profile evidence: his testimony that defendant had three separate addresses and that this was common in the officer's experience as a narcotics investigator. This testimony improperly compared defendant's characteristics to a drug profile. *People v Murray*, 234 Mich App 46, 57; 593 NW2d 690 (1999). We also note that it was improper for the officer to testify that he recognized people in photographs with defendant; this could lead the jury to conclude that he recognized them as drug dealers. This was more prejudicial than probative. MRE 403. However, in light of the strong evidence of defendant's guilt, these minor evidentiary errors could not have affected the outcome of the proceeding. *Carines, supra* at 763. We reject defendant's claim that the prosecutor acted improperly by even offering this evidence; defendant had the duty to object. We also reject defendant's claim that counsel was ineffective for failing to object. Defendant cannot show that, but for counsel's failure to object, the outcome of the proceeding would have been different. *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994).

Lastly, defendant argues that he was denied his constitutional right to the effective assistance of counsel. He was not. A motion to quash the felony-firearm charge would have been futile, because there was ample evidence to support the charge. Counsel need not file meritless motions to be effective. *People v Darden*, 230 Mich App 597, 605; 585 NW2d 27 (1998). Defendant argues that counsel failed to investigate possible defenses against the felony-firearm charge; namely, that defendant did not own the firearms or reside at the apartment. However, as noted above, these factors were irrelevant to defendant's guilt or innocence of that crime. *Burgenmeyer, supra* at 436; *Daniel, supra* at 50-51. Defendant also claims that counsel failed to object to evidence that the police went to the apartment in search of a homicide suspect. However, the prosecutor never insinuated that defendant was implicated in the homicide investigation. The suspect—defendant's brother—was not found at the apartment. Defendant has failed to show that, had the jury not known this information, the result of the proceeding would have been different. *Stanaway, supra* at 687-688.

Affirmed.

/s/ Kirsten Frank Kelly  
/s/ William B. Murphy  
/s/ E. Thomas Fitzgerald