

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

SAIF DAWOOD,

Defendant-Appellant.

UNPUBLISHED

April 20, 2004

No. 244716

Oakland Circuit Court

LC No. 2002-183196-FH

2002-183197-FH

2002-183209-FH

Before: Cooper, P.J., and Griffin and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right his jury conviction of possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), possession of a firearm during the commission of a felony, MCL 750.227(b), and two counts of delivery of marijuana, MCL 333.7401(2)(d)(iii). He was sentenced to one to four years' imprisonment for possession with intent to deliver, one to four years' imprisonment for each count of delivery of marijuana, and a consecutive two-year sentence for felony-firearm. We affirm.

Defendant first argues that the trial court erred by denying his motion to suppress the evidence seized from the home where he was arrested. We conclude that the trial court correctly denied defendant's motion to suppress because defendant lacked standing to challenge the search.

"The right against unreasonable searches and seizures is guaranteed by both the United States Constitution and Michigan Constitution." *People v Taylor*, 253 Mich App 399, 404; 655 NW2d 291 (2002). However, the right is personal and may not be invoked by third parties. *People v Zahn*, 234 Mich App 438, 446; 594 NW2d 120 (1999). To have standing to challenge a search, a defendant must have an expectation of privacy in the object of the search that society recognizes as reasonable. *Id.* at 446. Defendant has not presented any evidence showing that he had a reasonable expectation of privacy in the home that was searched. Defendant was merely a visitor to the home and, therefore, did not have standing to challenge the search. *People v Parker*, 230 Mich App 337, 340-341; 584 NW2d 336 (1998).

Defendant next argues that the prosecutor presented insufficient evidence to prove he possessed the marijuana and firearm seized during his arrest. This Court reviews claims of insufficient evidence de novo. *People v Lueth*, 253 Mich App 670; 660 NW2d 322 (2002). In reviewing the sufficiency of the evidence, this Court must view the evidence in the light most

favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999).

Defendant, who had previously sold marijuana to an undercover officer, stated that he would sell the officer an ounce of marijuana at a particular address. When the officer arrived at that address, defendant instructed another individual to get an ounce from the house. Officers then raided the house, discovering a coffee can with several large baggies of marijuana and eight to twelve smaller baggies. The officers also found a loaded handgun in a holster next to the can. After being advised of his *Miranda*¹ rights, defendant admitted that the marijuana and gun belonged to him and that he intended to sell the marijuana. Thus, the evidence was sufficient to enable a rational trier of fact to determine the element of possession was proven beyond a reasonable doubt.

Defendant also argues that the trial court abused its discretion when it precluded him from calling two witnesses because he failed to timely file his witness list. This Court reviews a trial court's decision to exclude testimony for failing to comply with a discovery order for an abuse of discretion. *People v Davie (After Remand)*, 225 Mich App 592, 597-598; 571 NW2d 229 (1997). Defendant failed to file his witness list fourteen days before trial, as required by the court's scheduling order and MCR 6.201(F). Under MCR 6.201(J), the trial court may exclude testimony or evidence when a party fails to comply with MCR 6.201(F). Defendant has not established that the trial court's decision to exclude the witness' testimony was an abuse of discretion.

Finally, defendant argues that his trial counsel was ineffective for failing to timely file his witness list. To establish an ineffective assistance of counsel claim, a defendant must show: (1) that counsel's performance was deficient, in that it fell below an objective standard of reasonableness under prevailing professional norms, and (2) counsel's deficient performance prejudiced the defense. *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). Defendant has not produced any evidence that the testimony of the witnesses would have affected the outcome of the proceeding. Therefore, defendant has not overcome the presumption that counsel rendered effective assistance. *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999).

Affirmed.

/s/ Jessica R. Cooper
/s/ Richard Allen Griffin
/s/ Stephen L. Borrello

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