

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALPHONZO LEON WRIGHT,

Defendant-Appellant.

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UNPUBLISHED

November 29, 2005

No. 256475

Genesee Circuit Court

LC No. 03-012650-FH

Before: Whitbeck, C.J., and Saad and O’Connell, JJ.

PER CURIAM.

Defendant Alphonzo Leon Wright appeals as of right his jury trial convictions for possession with the intent to deliver between 50 and 450 grams of cocaine,<sup>1</sup> and maintaining a drug vehicle.<sup>2</sup> The trial court sentenced Wright, as a third habitual offender,<sup>3</sup> to 217 months to 40 years’ imprisonment for his possession with the intent to deliver between 50 and 450 grams of cocaine conviction, and 415 days’ imprisonment for his maintaining a drug vehicle conviction. We affirm in part and reverse in part.

I. Basic Facts And Procedural History

On May 22, 2003, Officer Rogelio Villarreal testified that he surveilled 130 Odette St. in order to execute a warrant.<sup>4</sup> Officer Villarreal was looking for a gray Cadillac. After approximately 40 minutes, Officer Villarreal saw a gray Cadillac drive up to 130 Odette St.

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<sup>1</sup> MCL 333.7401(2)(a)(iii).

<sup>2</sup> MCL 333.7405(1)(d).

<sup>3</sup> MCL 769.11.

<sup>4</sup> During argument on defendant’s motion *in limine*, both the defense and prosecution referenced the fact that the defendant was originally wanted for a homicide investigation, and the warrant police were executing was an arrest warrant issued for defendant because of his suspected involvement with a homicide. However, Villarreal did not specify what type of warrant the police were executing while testifying.

Wright exited the car and walked up to the house. Wright then returned to the car and drove away from the house. Officer Villarreal notified the other officers about the Cadillac's departure. Officer Randy Tolbert followed Officer Villarreal's directions and met up with the Cadillac approximately three blocks away. Officer Tolbert followed the Cadillac in his unmarked car while it made numerous turns throughout Flint. At one point, the Cadillac began to drive at an accelerated rate. The Cadillac continued driving at an accelerated rate through a housing complex and down a few more streets until it reached an intersection that Officer Lee Kahan was blocking. The Cadillac swerved around Officer Kahan's marked police car and continued speeding down several more streets, nearly hitting another vehicle. When the Cadillac finally stopped, Wright exited the vehicle and started running.

Officer Tolbert chased Wright on foot. He chased Wright onto a front porch, where Wright reached into the front of his pants, grabbed a clear bag containing 125 grams of cocaine, and threw the bag onto the porch. When Officer Tolbert realized that Wright was not reaching for a weapon, he took Wright into custody. Officer Tolbert collected the bag of cocaine from the porch. He also found and collected a digital scale on the ground in front of the Cadillac and a cellular phone plugged into the cigarette lighter outlet.

In his statement taken by agents from the Bureau of Alcohol, Tobacco, and Firearms (ATF), Wright explained that he ran from the police because he "was dirty." According to ATF Special Agent Todd Bowden, the term "dirty" is a common street term for an individual who is in possession of or caught with an item that they are not supposed to have, such as cocaine. Wright admitted that the cocaine was his.

Sergeant Mark Blough was qualified as an expert in the area of sale and distribution of cocaine in the vicinity of Flint. He testified that, based on the quantity of cocaine Wright possessed, the scale, the fact that Wright had over \$100 in cash on him, and the lack of personal use paraphernalia, Wright possessed the cocaine with the intent to deliver it.

Wright filed a motion *in limine* with the trial court to exclude a three-hour video recorded interview, primarily regarding Wright's participation in a homicide. The interview took place after Wright was arrested for the instant charge but focused primarily on his involvement in a homicide. The trial court precluded the use of the videotape with respect to any matters other than this case. Defense counsel and the trial court endorsed the prosecution's offer to have Special Agent Bowden testify to Wright's admission to possession of cocaine in lieu of playing the video tape.

To explain how he became involved in the incident, Officer Kahan stated, "I heard one of the 800 cars puttin' [sic] out a chase or they were following a vehicle that had a potential homicide suspect in it." Out of the presence of the jury, defense counsel argued that Officer Kahan's reference to Wright as a homicide suspect was unduly prejudicial and violated the court's ruling on his motion *in limine*. Defense counsel then asked the trial court to declare a mistrial. The trial court ruled:

[C]learly, any reference to an alleged homicide or the [Wright] being a suspect is not relevant. However, the context of all the other testimony in this case, one reference to a homicide suspect with . . . nothing more, no further evidence, no further mentioning by either a witness or the prosecutor, seems to

be—to weigh against granting a motion for a mistrial. I don’t find it to be unduly prejudicial, but I am offering to give a curative instruction.

Defense counsel then renewed her motion for a mistrial, which the trial court denied. The trial court gave the following curative instruction to the jury: “[Y]ou are instructed to disregard any reference to an alleged homicide that you may have heard. It is totally irrelevant to any issues in this trial.”

The jury convicted Wright for possession with the intent to deliver between 50 and 450 grams of cocaine and maintaining a drug vehicle.

## II. Motion For Mistrial

### A. Standard Of Review

Wright first argues that the trial court abused its discretion when it denied his motion for a mistrial. We disagree. “A mistrial should be granted only for an irregularity that is prejudicial to the rights of the defendant and impairs his ability to get a fair trial.”<sup>5</sup> “[N]ot every instance of mention before a jury of some inappropriate subject matter warrants a mistrial.”<sup>6</sup> An unresponsive, volunteered answer to a proper question that injects improper evidence into a trial is not generally grounds for a mistrial, “unless the prosecutor knew in advance that the witness would give the unresponsive testimony or the prosecutor conspired with or encouraged the witness to give that testimony.”<sup>7</sup>

### B. Reference To Wright As Homicide Suspect

In response to a properly phrased question, Officer Kahan briefly indicated that Wright was a homicide suspect. Nothing suggests that the prosecutor knew in advance that Officer Kahan would give the unresponsive testimony or that he encouraged the statement. Its admission did not impair Wright’s ability to receive a fair trial. The trial court gave the jury an appropriate curative instruction and sufficient evidence was presented through the police officers’ testimony to support Wright’s conviction of possession with intent to deliver cocaine. Thus, the court properly denied Wright’s motion for a mistrial.

## III. Sufficiency Of The Evidence; Drug Vehicle

### A. Standard Of Review

Wright next argues that the prosecution did not present sufficient evidence to support his conviction for maintaining a drug vehicle because there was no evidence that he used the vehicle

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<sup>5</sup> *People v Griffin*, 235 Mich App 27, 36; 597 NW2d 176 (1999), quoting *People v Haywood*, 209 Mich App 217, 228; 530 NW2d 497 (1995) (alterations by *Griffin*).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*; *People v Hackney*, 183 Mich App 516, 531; 455 NW2d 358 (1990).

for the purpose of selling or keeping drugs. On de novo review of a claim of insufficient evidence, we view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt.<sup>8</sup>

#### B. Maintaining A Drug Vehicle

To satisfy the elements of maintaining a drug vehicle the prosecution must show that (1) the defendant exercised authority or control over the vehicle, (2) for the purpose of making it available for keeping or selling proscribed drugs, and (3) he did so continuously for an appreciable period of time.<sup>9</sup>

While evidence presented at trial was sufficient to show that Wright controlled the vehicle in which he was observed, it did not show that he controlled the car for the purpose of keeping or selling drugs and it did not show he did so continuously for an appreciable period of time. “Circumstantial evidence and reasonable inferences drawn from it may be sufficient to establish the elements of a crime.”<sup>10</sup> But “the fact that a piece of evidence has some tendency to make the existence of a fact more probable, or less probable, does not necessarily mean that the evidence would justify a reasonable juror in reasonably concluding the existence of that fact beyond a reasonable doubt.”<sup>11</sup> Even viewing the evidence in the light most favorable to the prosecution, only two inferences could be drawn from the evidence presented: (1) because Wright was observed throwing down the bag of cocaine after he exited the vehicle, it can be inferred that on that one occasion he possessed cocaine while he was in that vehicle; and (2) because the scale was found on the ground in front of the vehicle, it can be inferred that on that one occasion he possessed a scale in the car. It would require piling inference upon inference to conclude that Wright had used that vehicle for an appreciable period of time for the purpose of keeping or selling proscribed drugs. Police neither observed Wright selling drugs out of his car nor found any drugs in the car after he was arrested.<sup>12</sup> Thus, we cannot conclude that the prosecution presented sufficient evidence to support Wright’s maintaining a drug vehicle conviction.

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<sup>8</sup> *People v Fennell*, 260 Mich App 261, 270; 677 NW2d 66 (2004); *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001).

<sup>9</sup> MCL 333.7405(1)(d); *Griffin*, *supra* at 32-33.

<sup>10</sup> *Fennell*, *supra* at 270.

<sup>11</sup> *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979).

<sup>12</sup> Our review of relevant case law reveals that where a defendant has been convicted for maintaining a drug vehicle, or the related charge of maintaining a drug house, there has been a drug sales transaction or the police discovered clear evidence that drugs were being stored in the subject location. See e.g., *People v Custer*, 465 Mich 319; 630 NW2d 870 (2001); *People v Burgenmeyer*, 461 Mich 431; 606 NW2d 645 (2000); *People v McKinney*, 258 Mich App 157; 670 NW2d 254 (2003); *People v Gonzalez*, 256 Mich App 212; 663 NW2d 499 (2003); *Griffin*, *supra* at 29; *People v Bartlett*, 231 Mich App 139; 585 NW2d 341 (1998).

We affirm Wright's possession with the intent to deliver conviction but reverse Wright's maintaining a drug vehicle conviction.

/s/ William C. Whitbeck

/s/ Henry William Saad

/s/ Peter D. O'Connell