STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 25, 2007
v	No. 266807 Oakland Circuit Court
CARLETUS LASHAWN WILLIAMS, Defendant-Appellant.	LC No. 2004-199576-FH 2005-201296-FH

Before: Owens, P.J., and Bandstra and Davis, JJ.

PER CURIAM.

In LC No. 2004-199576-FH, a jury convicted defendant of possession with intent to deliver 50 or more but less than 450 grams of cocaine, MCL 333.7401(2)(a)(iii), felon in possession of a firearm, MCL 750.224f, and two counts of possession of a firearm during the commission of a felony, MCL 750.227b. In LC No. 2005-201296-FH, the same jury convicted defendant of possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), felon in possession of a firearm, carrying a concealed weapon in a vehicle, MCL 750.227(1), and one count of felony-firearm. Defendant appeals as of right; his sole argument on appeal is that the trial court should not have consolidated the two cases for trial because they were unrelated. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Officers from the Oakland County Narcotics Enforcement Team executed a search warrant at a Motel 6 motel room on November 4, 2004. They knocked and announced their presence, and they forced the door open when they received no response. As they entered, defendant, the sole occupant, was just walking out of the bathroom and the toilet was in mid-flush. A bag of suspected crack cocaine was caught in the drain and an officer fished it out. Another officer broke the toilet bowl and recovered one or more small rocks. In the room itself, the officers found some large chunks of suspected crack cocaine, several small rocks in individual "corner ties," a digital scale, a box of razor blades, a container of sandwich baggies, some individual baggies with missing corners, a pair of scissors, two handguns and ammunition, over $500 in cash, and a receipt showing that the room had been rented to defendant. The suspected narcotics weighed at least 50 grams and tested positive for cocaine.

Pontiac police officers testified that they executed another search warrant at 510 Nevada on February 2, 2005. The officers saw defendant arrive in a 1994 Ford and enter the house shortly before the warrant was executed. The officers again knocked and announced their

presence, then forced the door open when they received no response. Defendant and another person were in the living room. Defendant was seated in a chair with a brown bag in his lap. He was leaning down with his right hand extended toward the floor between the chair and the television set. He ignored orders to raise his hands. On the floor where defendant had been reaching, the officers found a plastic bag containing approximately 18 rocks of suspected cocaine. The bag in defendant's lap contained sandwich baggies and a pair of scissors. A digital scale and a box of sandwich baggies were on top of the television, along with a set of keys that included a key to the 1994 Ford. Both inside the back of the television and on the floor behind it were empty baggies and used "corner ties" with cocaine residue. Defendant had over $1,000 in his wallet. Inside the trunk of the 1994 Ford, the officers found a handgun and two assault rifles. The suspected narcotics weighed just under ten grams and tested positive for cocaine.

The parties stipulated that defendant had a prior felony conviction and was not eligible to possess a firearm.

At the time of defendant's trial, MCR 6.120(A) permitted two or more informations against a single defendant to be consolidated for trial. However, if the charged offenses are unrelated, they must be severed on the defendant's motion. MCR 6.120(B). The court rule defines "related" offenses as those based on "the same conduct" or on "a series of connected acts or acts constituting part of a single scheme or plan." MCR 6.120(B)(1) and (2). We review a trial court's decision whether to sever charges for trial for an abuse of discretion, but whether charges are related is a question of law that is reviewed de novo. *People v Girard,* 269 Mich App 15, 17; 709 NW2d 229 (2005).

A defendant is entitled to severance if the joined offenses are merely "of the same or similar character," which our Supreme Court has explained falls short of being the "same conduct." *People v Tobey*, 401 Mich 141, 150-153; 257 NW2d 537 (1977). Thus, in a situation similar to the instant case, although "selling heroin on different days to the same person is substantially similar conduct, it is not the same conduct or act." *Id*., 149. However, a common scheme or plan exists when an individual defendant commits two or more offenses to achieve a single goal. *People v McCune*, 125 Mich App 100, 103; 336 NW2d 11 (1983). The offenses here were not discrete, unrelated sales. Rather, they indicated a single scheme or plan to earn money by selling cocaine. In both, defendant was found in possession of enough cocaine to indicate an intent to sell it, as well as the necessary equipment to prepare it for sale and weaponry to defend the operation. The evidence therefore indicated that both of defendant's offenses were connected parts of an ongoing scheme or plan to sell drugs. When offenses are part of a single scheme or plan, joinder is permitted "even if considerable time passes between them." *Tobey, supra* at 152 n 15.Therefore, the trial court did not err in concluding that the offenses were related.

Affirmed.

/s/ Donald S. Owens
/s/ Richard A. Bandstra
/s/ Alton T. Davis