STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 3, 2010
v	No. 291235 Wayne Circuit Court
TIMOTHY WAYNE GRANDBERRY, Defendant-Appellant.	LC No. 08-010952-FH

Before: SHAPIRO, P.J., and JANSEN and DONOFRIO, JJ.

PER CURIAM.

Defendant appeals by right his bench-trial convictions of possession with intent to deliver 50 or more but less than 450 grams of heroin, MCL 333.7401(2)(a)(*iii*), felon in possession of a firearm (felon-in-possession), MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), second offense, MCL 750.227b. He was sentenced to concurrent prison terms of 99 months to 20 years for the heroin conviction and 1 to 5 years for the felon-in-possession conviction. He was also sentenced to a consecutive term of five years for the felony-firearm conviction. We affirm. This appeal has been decided without oral argument. MCR 7.214(E).

Defendant's convictions arose from the discovery of heroin and a firearm during the execution of a search warrant at the home of his brother. According to the officers who executed the warrant, defendant was found in a makeshift bedroom or sitting room in the basement. He was seated at a table that contained an electronic scale, empty Ziploc bags, and what appeared to be "narcotic residue." Police also found a loaded SKS assault rifle propped up in the southwest corner of the basement, located in plain view less than ten feet from where defendant had been seated. When defendant said "to look into the chimney cleanout chute" in the wall across from the table, an officer found five knotted baggies containing 55.73 grams of a substance containing heroin. Defense witnesses testified that defendant did not live in the basement and was not there when the police entered the house.

Defendant first argues that the trial court's findings indicate that the court improperly relied on inadmissible hearsay evidence to find him guilty. Following a bench trial, we review the trial court's factual findings for clear error and its conclusions of law de novo. *People v Lanzo Constr Co*, 272 Mich App 470, 473; 726 NW2d 746 (2006).

In a bench trial, it is assumed that the trial judge "can hear relevant evidence, weigh its probative value and reject any improper inferences" that might be drawn therefrom. *Schultz v Butcher*, 24 F3d 626, 632 (CA 4, 1994). In the absence of proof to the contrary, the court is presumed to have followed the law, *People v Farmer*, 30 Mich App 707, 711; 186 NW2d 779 (1971), and to have predicated its verdict only "upon evidence properly offered and not upon . . . inadmissible testimony." *People v Payne*, 37 Mich App 442, 445; 194 NW2d 906 (1971).

During his testimony, one officer testified that the subject identified in the search warrant was known as "T" and that the warrant contained a physical description. Two officers testified that defendant resembled the description of "T." In its findings, the trial court noted, "[I]t's apparently also true that the defendant . . . met the description or fit the description of a person who was named in the warrant." Defendant contends that the physical description of "T" was inadmissible hearsay and that the trial court recognized that fact but nonetheless improperly used it as substantive evidence of guilt. We disagree.

While the warrant's description of "T" was an out-of-court assertion, defendant has not shown that it was offered for the truth of the matter asserted. See MRE 801(c). That is, defendant has not shown that the description was offered to prove that "T" was in fact 5'9," between 225 and 240 pounds, between 35 and 40 years old, and dark complected. If anything, the warrant's description simply explained the basis for the officers' conclusion that defendant resembled the person described in the warrant. Further, the court did not rely on the fact that defendant resembled the description of "T" to find that defendant possessed the drugs in question. Rather, the fact that defendant resembled "T" was an indication that the officers did not arbitrarily target him, which supported an inference that they did not have a motive to lie about where defendant was and what he said and did during the raid. We find no error with respect to defendant's argument on this issue.

Defendant next argues that the trial court improperly refused to admit his written statement, in which he denied that the "suspected narcotics" and gun found in the house belonged to him. A trial court's ruling concerning the admission of evidence is reviewed for an abuse of discretion. *People v Hine*, 467 Mich 242, 250; 650 NW2d 659 (2002). "When the decision regarding the admission of evidence involves a preliminary question of law, such as whether a statute or rule of evidence precludes admissibility of the evidence, the issue is reviewed de novo." *People v Washington*, 468 Mich 667, 670-671; 664 NW2d 203 (2003). Whether a defendant's right to present a defense was violated by the exclusion of evidence is a constitutional question that is also reviewed de novo. *People v Kurr*, 253 Mich App 317, 327; 654 NW2d 651 (2002).

Defendant argues that the exclusion of the evidence violated his right to present a defense. We disagree. "A criminal defendant has a state and federal constitutional right to present a defense." *Kurr*, 253 Mich App at 326. "However, an accused's right to present evidence in his defense is not absolute." *People v Unger*, 278 Mich App 210, 250; 749 NW2d 272 (2008). "It is well settled that the right to assert a defense may permissibly be limited by 'established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence.'" *People v Toma*, 462 Mich 281, 294; 613 NW2d 694 (2000), quoting *Chambers v Mississippi*, 410 US 284, 302; 93 S Ct 1038; 35 L Ed 2d 297 (1973). Thus, the rules of evidence "do not abridge an accused's right to present a defense so long as they are not 'arbitrary' or 'disproportionate to the purposes they are designed to serve.'"

Unger, 278 Mich App at 250, quoting *United States v Scheffer*, 523 US 303, 308; 118 S Ct 1261; 140 L Ed 2d 413 (1998).

Defendant wished to offer his written statement to prove that he had denied ownership of the contraband. In other words, defendant wished to offer an out-of-court statement to prove the truth of the matter asserted therein. The statement therefore would have constituted hearsay, MRE 801(c), and would have been inadmissible absent an exception to or exclusion from the hearsay rule, MRE 802. Defendant does not contend that the rule against hearsay is either arbitrary or disproportionate to its purpose, and thus has not shown that the exclusion of the hearsay evidence impermissibly infringed on his right to present a defense. See *Unger*, 278 Mich App at 250.

Defendant also contends that the written statement should have been admitted under the "rule of completeness." Before adoption of the rules of evidence, the common-law rule of completeness provided that when the prosecutor introduces part of an inculpatory statement made by a defendant, the defendant has the right to have the whole conversation admitted if it is part of the same conversation, even if it consists of "self-serving statements." *People v Warren*, 65 Mich App 197, 199-200; 237 NW2d 247 (1975). This rule finds its current iteration in MRE 106, which provides:

> When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction *at that time* of any other part or any other writing or recorded statement which ought in fairness to be considered *contemporaneously* with it. [Emphasis added.]

In this case, the rule was not applicable because defendant did not request that the prosecutor introduce relevant portions of his written statement at the time she elicited his verbal statement. See MRE 106. Further, the purpose of the rule of completeness was "to prevent unfairness which may result if a statement is taken out of context." *Moody v Pulte Homes, Inc*, 125 Mich App 739, 747; 337 NW2d 283 (1983), rev'd in part on other grounds 423 Mich 150 (1985). Defendant's written statement that the heroin did not belong to him did not provide context for his verbal statement to the police that the heroin could be found in the chimney. Nor does defendant explain how his verbal statement that the heroin could be found in the chimney would have been made "complete" by introduction of his written statement. Rather, defendant merely argues that his written statement should have been admitted to rebut any implication of guilt created by his verbal statement.

However, defendant's two statements were not inconsistent, and the completeness or accuracy of one statement therefore did not depend on the introduction of the other. See *United States v Hedgepeth*, 418 F3d 411, 422-423 (CA 4, 2005). As courts in other jurisdictions have recognized, the rule of completeness does not generally allow a defendant to admit his own out-of-court *written* statement to clarify or add context to a prior *verbal* statement. See, e.g., *id.*; *State v Hemond*, 178 Vt 470, 471-472; 868 A2d 734 (2005); *United States v Ramirez-Perez*, 166 F3d 1106, 1113-1114 (CA 11, 1999). Moreover, the fact that defendant's written statement suggested that the heroin did not belong to him would not have disproved the element of possession in this case. It is well settled that a defendant need not actually own a controlled substance to be found guilty of its possession under Michigan law. *People v Wolfe*, 440 Mich

508, 520; 489 NW2d 748, amended 441 Mich 1201 (1992). We cannot conclude that the trial court abused its discretion by excluding the written hearsay statement.

Affirmed.

/s/ Kathleen Jansen
/s/ Pat M. Donofrio