

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALPHONSO SONES,

Defendant-Appellant.

UNPUBLISHED

June 26, 1998

No. 199749

Muskegon Circuit Court

LC No. 96-138939 FH

Before: MacKenzie, P.J., and Whitbeck and G.S. Allen, Jr.*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession with intent to deliver more than 50 but less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii), possession of marijuana, MCL 333.7403(2)(d); MSA 14.15(7403)(2)(d), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to ten to twenty years' imprisonment for the possession with intent to deliver cocaine conviction, one year for the possession of marijuana conviction, and a consecutive two-year term for the felony-firearm conviction. He appeals as of right. We affirm.

Defendant first contends that the search warrant leading to the evidence upon which this prosecution was based was defective. We disagree. The search warrant was sufficient to enable a reasonably cautious person to find that the confidential informant was credible and the information reliable. *People v Sloan*, 450 Mich 160, 168-169; 538 NW2d 380 (1995); *People v Russo*, 439 Mich 584, 603-604; 487 NW2d 698 (1992). Also, there was a substantial basis for the finding of probable cause, and the information in the search warrant was not "stale." *People v Head*, 211 Mich App 205, 208-209; 535 NW2d 563 (1995).

We reject defendant's claim that the evidence was insufficient to convict him of possession with intent to deliver cocaine and of felony-firearm. Viewing the evidence in a light most favorable to the prosecutor, a rational trier of fact could have found that the essential elements of the charged crimes

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

were proved beyond a reasonable doubt. *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996). The evidence established a sufficient connection between defendant and the contraband to support an inference that he exercised dominion and control over the cocaine and the weapons. *People v Wolfe*, 440 Mich 508, 519-521; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Fetterley*, ___ Mich App ___; ___ NW2d ___ (Docket No. 189936, issued 5/8/98), slip op, pp 1-3. Also, considering the amount of cocaine involved and the fact that it had been weighed and packaged into individual baggies, and considering the paraphernalia that was seized from the home, a reasonable inference could be drawn that defendant intended to sell the cocaine. *People v Catanzarite*, 211 Mich App 573, 577-578; 536 NW2d 570 (1995).

Defendant also argues that the trial court abused its discretion in permitting the late introduction of fingerprint cards, which had been taken during a prior encounter with the criminal justice system. On appeal, defendant claims that admission of this evidence violated MRE 404(b). However, defendant did not preserve this issue by objecting to the evidence on this basis in the trial court. *Federated Publications, Inc v Board of Trustees of Michigan State University*, 221 Mich App 103, 119; 561 NW2d 433 (1997). Even if this issue had been preserved, however, we conclude that the evidence was admitted for a proper purpose, namely, as evidence of defendant's identity as the person who left fingerprints on items that contained cocaine and money. *People v VanderVliet*, 444 Mich 52, 74-75; 508 NW2d 114 (1993), modified 445 Mich 1205 (1994).

We also conclude that defendant was not denied a fair trial by the late introduction of the prior fingerprint cards. Defendant had been on notice from the beginning of the case that fingerprint evidence would be introduced and he was aware that the fingerprints taken during his arrest in this matter were not usable for comparison. Moreover, defendant was provided sufficient time to obtain a fingerprint expert if he so desired.

Additionally, we are satisfied that the trial court did not abuse its discretion in permitting the prosecutor to add as a witness the police officer who took the prior fingerprints. MCL 767.40a(4); MSA 28.980(1)(4). Defendant was provided sufficient time to interview the witness and view the evidence. The trial court's remedy adequately protected defendant's rights. *People v Lino (After Remand)*, 213 Mich App 89, 92-93; 539 NW2d 545 (1995), overruled on other grounds 220 Mich App 662, 673-674; 560 NW2d 657 (1996); *People v Williams*, 188 Mich App 54, 58-59; 469 NW2d 4 (1991). Defendant was not prejudiced by the late endorsement. *Id.*

Next, defendant contends that the trial court abused its discretion when it denied his motion in limine based on a failure to comply with discovery orders. We disagree. *People v Valeck*, 223 Mich App 48, 51; 566 NW2d 26 (1997); *People v Johnson*, 206 Mich App 122, 126; 520 NW2d 672 (1994). The record shows that the prosecutor did not deliberately suppress information, *People v Tracey*, 221 Mich App 321, 324; 561 NW2d 133 (1997), and defendant has failed to demonstrate that he was prejudiced by any delay in receiving the evidence from the prosecutor.

However, we find merit to defendant's claim that the trial court abused its discretion in permitting Detective Van Anandel to testify as an expert witness on the use, sale, manufacture, and

delivery of cocaine in Muskegon County after he sat through most of the trial assisting the prosecutor, despite the fact that all witnesses were subject to a sequestration order. *People v Solak*, 146 Mich App 659, 669; 382 NW2d 495 (1985). It has long been held that the decision to exclude the testimony of a witness who has violated a sequestration order is within the trial court's discretion. *Id.* This Court has found no abuse of discretion by the trial court where the court permitted a witness to testify after a violation of the sequestration order and the witness' appearance in the courtroom was very brief and the testimony related to events which were not the subject of any other testimony. *People v Boose*, 109 Mich App 455, 474-475; 311 NW2d 390 (1981). This Court has also found no abuse of discretion where the witness was the complaining witness, the witness was present for only a few minutes during the defendant's testimony, and the testimony for which the witness was present was unrelated to the testimony the witness was being called to rebut. *Solak, supra*. In this case, however, Van Andel was not the complaining witness, he sat through most of the trial, he testified as an expert witness, and his testimony related to the main issues at trial. See *People v Dickerson*, 62 Mich App 457, 459-460; 233 NW2d 612 (1975).

Although Van Andel's name had been listed on the original witness list as a res gestae witness, he had not been designated as an expert witness by the prosecutor and we do not agree with the trial court that his name on the original witness list was sufficient notice that he could be called as an expert witness. While the court rules do not preclude the assisting officer from testifying, we find that the prosecutor did not set forth a good reason for failing to advise defendant that he intended to call Van Andel as an expert witness.

Nevertheless, we find the error harmless because the evidence against defendant, without Van Andel's testimony, was sufficient to allow a rational trier of fact to find defendant guilty beyond a reasonable doubt and it is not reasonably probable that the admission of Van Andel's testimony affected the outcome of the trial. *In re Hamlet (After Remand)*, 225 Mich App 505, 518; 571 NW2d 750 (1997); *People v Hubbard*, 209 Mich App 234, 243; 530 NW2d 130 (1995).

We also conclude that the challenged testimony of Van Andel constituted improper drug profile evidence under *Hubbard, supra* at 242. Nevertheless, we again find the error to be harmless. Here, unlike the facts and circumstances in *Hubbard*, defendant's guilt was not "closely drawn." *Id.* at 243. Rather, the circumstantial evidence of defendant's guilt was overwhelming. There is no reasonable probability that the admission of the profile evidence affected the jury's verdict. Defendant was not denied a fair trial.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ William C. Whitbeck
/s/ Glenn S. Allen, Jr.