

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEE PERCY LONGMIER,

Defendant-Appellant.

UNPUBLISHED

July 24, 1998

No. 198905

Ionia Circuit Court

LC No. 96-010593 FH

Before: Doctoroff, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Defendant was convicted by a jury of carrying a concealed weapon, MCL 750.227; MSA 28.424, resisting and obstructing a police officer, MCL 750.479; MSA 28.747, possession of a controlled substance (cocaine) in an amount less than twenty-five grams, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), and possession of a firearm during the commission of a felony (felony-firearm), MSA 750.227b; MSA 28.424(2). Defendant was sentenced as an habitual offender, second offense, MCL 769.10; MSA 28.1082, to three years and four months to seven and one-half years' imprisonment for the CCW conviction,¹ one to two years for the resisting and obstructing conviction, two to four years for the possession of cocaine conviction, and the mandatory consecutive two-year term for the felony-firearm conviction. Defendant now appeals of right and we affirm.

Defendant first argues that his convictions should be set aside because the prosecution failed, until the day of trial, to provide him with a copy of a supplemental police report concerning a statement made to the police by defendant's brother. An issue regarding discovery is committed to the sound discretion of the trial court. Therefore, this Court reviews the trial court's decision for an abuse of discretion. *People v Davie (After Remand)*, 225 Mich App 592, 597-598; 571 NW2d 229 (1997). A trial court must exercise its discretion to fashion an appropriate remedy by balancing the interests of the courts, the public, and the parties. *Id.* at 598. This judicial balancing requires inquiry into all the relevant circumstances, including "the causes and bona fides of tardy, or total, noncompliance, and a showing by the objecting party of actual prejudice." *Id.*

The prosecution claimed that it believed the supplemental report had been previously sent to defendant, but that if it had not been the oversight was due to a staffing shortage. The defense made no

showing that this explanation was untrue or that the prosecution acted in bad faith. Moreover, defendant received a copy of the report before any testimony was taken at trial. He did not attempt to subpoena the police officer who made the report, and he never used the report in his examination of his brother. An examination of the supplemental report discloses that it is consistent with the brother's trial testimony. Defendant has failed to demonstrate any prejudice from the late provision of the supplemental report and therefore has failed to demonstrate that the trial court abused its discretion by denying his motion to dismiss.

Defendant next argues that the evidence was insufficient to show that he possessed the knotted remnant of a plastic baggie that contained cocaine residue. In reviewing such a claim, this Court views the evidence introduced at trial in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that this essential element of the offense was proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, modified 441 Mich 1201 (1992).

Possession of a controlled substance may be either actual or constructive, *Wolfe, supra* at 519-520, and may be proven by direct or circumstantial evidence. *Id.* at 526; *People v Hill*, 433 Mich 464, 469; 446 NW2d 140 (1989). Possession of trace or residual amounts of a controlled substance are sufficient to demonstrate guilt. *People v Harrington*, 396 Mich 33; 238 NW2d 20 (1976); *People v Ricky Vaughn*, 200 Mich App 32, 37-38; 504 NW2d 2 (1993).

A review of the evidence in a light most favorable to the prosecution leads us to conclude that a rational trier of fact could have found that defendant had possessed the baggie remnant. The police discovered the knotted top of the baggie in one of defendant's distinctive foot prints along a path defendant had taken while fleeing from the police. Defendant's gestures as he ran suggested that he was throwing something away and, when considered with evidence of defendant's possession of a handgun, a large amount of money, a pager, and a cellular telephone, the jury could reasonably infer that defendant possessed a baggie of cocaine which he ripped apart and threw away as he ran across the snow-covered field.

Finally, defendant argues that the prosecution violated the strictures of MRE 404(b) and MRE 609 by improperly questioning him regarding his prior conviction, his parole, his use of cocaine, and his drug rehabilitation. We disagree. During his direct testimony, defendant introduced the topic of his prior felony conviction for unarmed robbery, the fact that he had been on parole, the fact that he had used drugs previously, and the fact that he received testing for drug use while he was on parole. Defendant tried to use these disclosures to suggest to the jurors that he was being forthright and honest with them, and also to provide support for his claim that he could not have possessed the baggie of cocaine because he did not use drugs. Defendant thus "opened the door" to inquiry into these areas by the prosecution on cross-examination. *People v Figgures*, 451 Mich 390, 399-400; 547 NW2d 673 (1996).

Affirmed.

/s/ Martin M. Doctoroff
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot

¹ The supplemental information pertained only to the charge of carrying a concealed weapon.