STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 13, 2000
v	No. 211455 Genesee Circuit Court
THADIS LAMARR SPARKS, Defendant-Appellant.	LC No. 97-001793-FC

Before: Markey, P.J., and Gribbs and Griffin, JJ.

PER CURIAM.

Defendant was convicted by a jury of armed robbery, MCL 750.529; MSA 28.797, possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), felon in possession of a firearm, MCL 750.224f; MSA 28.421(6), and carrying a concealed weapon, MCL 750.227; MSA 28.424. He was sentenced as a second habitual offender, MCL 769.10; MSA 28.1082, to concurrent prison terms of eight to twenty years for the armed robbery conviction, forty to sixty months for the felon in possession of a firearm conviction, forty to sixty months for the carrying a concealed weapon conviction, and a consecutive two-year term for the felony-firearm conviction. Defendant appeals by right. We affirm.

I

Defendant first argues that the trial court clearly erred in refusing to grant his motion to suppress the evidence found in his safe on the ground that the police seized the safe illegally when an officer lifted it momentarily and its top fell open, revealing its incriminating contents. We disagree. A trial court's ruling regarding a motion to suppress evidence as illegally seized will not be reversed on appeal unless the ruling is clearly erroneous. *People v Stevens*, 460 Mich 626, 630; 597 NW2d 53 (1999); *People v Hampton*, 237 Mich App 143, 148; 603 NW2d 270 (1999); see, also, *People v Goforth*, 222 Mich App 306, 310; 564 NW2d 526 (1997) (the validity of consent is reviewed for clear error). However, the application of a constitutional standard to uncontested facts is reviewed de novo as a question of law on appeal. *Stevens, supra* at 630-631; *Goforth, supra* at 310 n 4.

Both the federal and state constitutions guarantee the right against unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11; *People v Zahn*, 234 Mich App 438, 446; 594 NW2d 120 (1999). The lawfulness of a seizure or a search depends on its reasonableness. *People v Armendarez*, 188 Mich App 61, 66; 468 NW2d 893 (1991). Generally, a search and seizure conducted without a warrant is unreasonable per se unless there exist both probable cause and a circumstance establishing an exception to the warrant requirement. *People v Borchard-Ruhland*, 460 Mich 278, 293-294; 597 NW2d 1 (1999); *People v Mayes* (*After Remand*), 202 Mich App 181, 184; 508 NW2d 161 (1993).

The arguments of the parties and the trial court's decision primarily concern whether Williamson had authority to consent to the seizure and search of defendant's safe. "The consent exception to the warrant requirement allows a search and seizure when consent is unequivocal, specific, and freely and intelligently given." *People v Marsack*, 231 Mich App 364, 378; 586 NW2d 234 (1998). Generally, one may consent to a search of himself, his property, or premises. *Goforth, supra* at 309. Additionally, a third party who shares common authority over property may consent to its search. *Id.* at 311-312. Common authority is defined as follows:

> Common authority is, of course, not to be implied from the mere property interest a third party has in the property. The authority which justifies the third-party consent . . . rests rather on mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched. [*Id.*, quoting *United States v Matlock*, 415 US 164, 171 n 7; 94 S Ct 988; 39 L Ed 2d 242 (1974).]

Further, a warrantless search may be valid where the circumstances are such that the police reasonably believe that the third party possesses common authority over the premises or property to be searched. *Goforth, supra* at 312, quoting *Illinois v Rodriguez*, 497 US 177, 179, 189; 110 S Ct 2793; 111 L Ed 2d 148 (1990).

We agree with defendant that the police could not rely on Williamson's consent to search defendant's safe . Although the police obtained Williamson's express consent to search her house and were aware that defendant had been staying there, they also knew the safe was defendant's personal property. Although Williamson told the police that she moved the safe because it was in her way, she did not state or imply that she had looked in the safe or had defendant's permission to do so. Moreover, the record indicates that defendant had kept the safe closed, albeit unlocked. Based on these facts and the intrinsic nature of the safe as a private, secure place intended for valuables and other personal effects, we find that the police could not have believed reasonably that Williamson had common authority over the safe such that she could permit a search of it. At the very least, the police were obligated to make further inquiry into Williamson's ability to validly consent to a search of the safe because the circumstances were such that a reasonable person would question Williamson's power or control over it. See *id.*; see, also, *People v Gary*, 150 Mich App 446, 452; 387 NW2d 877 (1986).

Thus, to the extent the trial court's decision on the suppression issue was premised on the consent doctrine, it was incorrect.

Nevertheless, we believe that the parties and the trial court misapprehended the basic, controlling issue. The trial court found that Officer James Santa merely moved defendant's safe when its door popped open, revealing its contents. Defendant argues that Officer Santa's initial act of moving the safe constituted a "seizure" for constitutional purposes, and thus, in the absence of Williamson's power to consent to the police action, it was necessary for the police to obtain a warrant permitting the seizure. However, for constitutional purposes, a seizure occurs "when there is some *meaningful* interference with an individual's possessory interests in that property." *United States v Jacobsen*, 466 US 109, 113; 104 S Ct 1652; 80 L Ed 2d 85 (1984) (emphasis added).[1] Defendant cannot plausibly assert that Officer Santa "seized" the safe in constitutional parlance when he merely picked it up to move it, and its door fell open. At that point, there had been no meaningful interference with defendant's property interest in the safe. See *Arizona v Hicks*, 480 US 321, 324; 107 S Ct 1149; 94 L Ed 2d 347 (1987) (no meaningful interference with property interest where police merely recorded serial numbers from stolen property). Thus, there was no seizure of the safe and its contents when Santa originally moved it.

Once the safe fell open inadvertently, the police were not required to ignore its contents, which, according to the record, could be viewed easily from outside the safe without disturbing them. The police were able to view the contents of the safe from a lawful vantage point pursuant to Williamson's authorization to search her house. Defendant's safe being open to view, it was permissible for the police to glance inside it. See *People v Champion*, 452 Mich 92, 101-102; 549 NW2d 849 (1996) ("It would be unreasonably inconvenient to require the police, once they have made a valid intrusion and have discovered probable evidence in plain view, to leave, obtain a warrant, and return to resume a process already in progress.").

Thereafter, the police acted reasonably by securing defendant's safe until a search warrant could be obtained because they would have acted reasonably had they searched the safe at the scene. The exigent circumstances exception to the general warrant requirement allows a warrantless entry and search where the police have probable cause to believe the area to be searched contains evidence of a crime and specific and objective facts indicate that immediate action is necessary to prevent the imminent destruction of evidence and/or to protect the police officers or others. *People v Snider*, 239 Mich App 393, 408; 608 NW2d 502 (2000), quoting *In re Forfeiture of $176,598*, 443 Mich 261, 271; 505 NW2d 201 (1993). In light of all the circumstances, including their legal view into the safe, we find that the police had probable cause, or a substantial basis, to believe a search of the safe would uncover evidence of the armed robbery. See *Snider*, *supra* at 406-407. Further, exigent circumstances justified the police to act immediately. The safe was unlocked and located in Williamson's house. Although the police lacked a reason to arrest Williamson for the armed robbery,

[1] Absent a compelling reason to impose a different interpretation, the Michigan Constitution is construed to provide the same protection as that secured by the Fourth Amendment. *People v Levine*, 461 Mich 172, 178; 600 NW2d 622 (1999).

they had no way of knowing whether she would attempt to remove and destroy the evidence contained in the safe, or, indeed, whether she would obtain the gun from the safe and use it against the officers in her home. Further, the record indicates that Williamson had young children who could enter the unlocked safe and obtain the gun. Thus, the exigent circumstances exception would have justified an immediate, warrantless search of the safe at the scene. *Id.* at 408. Moreover, it was reasonable for the police to take the less drastic route of securing the safe in order to obtain a search warrant before conducting a full-scale search. See *Champion*, *supra* at 115-117 (where police have probable cause to arrest and conduct full-scale search of arrestee, failure of police to arrest does not negate validity of full-scale search). Although the trial court decided against suppression on an incorrect basis, we find that because it reached the right decision, we affirm its decision. See *People v Rodriguez*, 236 Mich App 568, 574; 601 NW2d 134 (1999).

II

Next, defendant argues that admission of Emily Catanese's testimony was improper because it violated MCL 775.7; MSA 28.1244, which forbids the prosecutor from paying fees to witnesses on behalf of the people in any prosecution, except in certain circumstances. We disagree.

The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. *People v Stanaway*, 446 Mich 643, 658; 521 NW2d 557 (1994). In determining the intent of the Legislature, the first criterion is the specific language of the statute. *Borchard-Ruhland*, *supra* at 284. "The fair and natural import of the terms employed, in view of the subject matter of the law, is what should govern." *People v Morey*, 461 Mich 325, 330; 603 NW2d 250 (1999), quoting *People ex rel Twitchell v Blodgett*, 13 Mich 127, 168 (1865) (Cooley, J.). If the plain and ordinary meaning of the language is clear, judicial construction is normally neither necessary nor permitted. *Morey*, *supra.*

Turning to the statute, we do not find that it prohibits prosecutors from entering into plea agreements with witnesses in exchange for testimony. MCL 775.7; MSA 28.1244 clearly contemplates the procedure by which the court may pay certain witnesses for the prosecution—the poor and those who have traveled from other states, territories, and countries—to alleviate the financial burden of appearing in court to testify. In the event that a witness qualifies for such a payment, the court may enter an order directing the county treasurer to pay the witness a reasonable sum for the expenses. Finally, the statute directs, "no *fees* shall be allowed or paid to witnesses on the part of the people in any criminal proceeding or prosecution except as is provided in this section and act." Within the context of the statue and according to its natural meaning, the word "fee" clearly means a *monetary* payment in exchange for services. See *Random House Webster's College Dictionary* (1992).[2] Thus, the statute in question neither forbids nor even considers prosecutorial plea agreements in exchange for testimony.

Moreover, we read the language of a statute in light of previously established rules of common law, including common law adjudicatory principles. *Nummer v Dep't of Treasury*, 448 Mich 534,

[2] A court may consult dictionary definitions when interpreting a statute. *Morey*, *supra.*

544; 533 NW2d 250 (1995). We doubt highly that, by enacting MCL 775.7; MSA 28.1244, the Legislature intended to prohibit by mere implication the longstanding practice of granting prosecutorial leniency to witnesses in exchange for their testimony. Accordingly, we reject defendant's argument that MCL 775.7; MSA 28.1244 prohibited the prosecutor from granting Catanese leniency in exchange for her testimony against defendant.

III

Next, defendant argues that the statute under which he was convicted for being a felon in possession of a firearm, MCL 750.224f; MSA 28.421(6), unconstitutionally violates Const 1963, art 1, § 6, which guarantees the "right to keep and bear arms." However, at least two panels of this Court have addressed this issue and found that the felon-in-possession statute is a reasonable exercise of the state's police power and, thus, not violative of the Michigan Constitution. *People v Green*, 228 Mich App 684, 692; 580 NW2d 444 (1998); *People v Swint*, 225 Mich App 353, 375; 572 NW2d 666 (1997). Thus, defendant's claim is without merit.

Defendant also argues cursorily that he was prejudiced because the jury was told that he had been convicted of a prior felony. Defendant agreed to stipulate that he had been convicted of a prior, unnamed felony; the jury was instructed accordingly. We will not allow defendant to assign error on appeal to something his own counsel deemed proper. *Green*, *supra* at 691.

IV

Finally, defendant argues that he was denied a fair trial because the prosecutor impermissibly commented to the jury that defense counsel was not truthful. Because defendant failed to object to the allegedly improper comments, appellate review is precluded unless any prejudicial effect could not have been cured by a cautionary instruction, or unless our failure to consider the issue would result in a miscarriage of justice. *People v Cooper*, 236 Mich App 643, 650; 601 NW2d 409 (1999). Reading the prosecutor's comments in context, as is our practice, *People v Kennebrew*, 220 Mich App 601, 608; 560 NW2d 354 (1996), we find that they were made as a proper response to defense counsel's closing argument. Further, a timely requested curative instruction would have cured any prejudicial effect the prosecutor's comments may have had. Accordingly, appellate relief is not warranted.

We affirm.

/s/ Jane E. Markey
/s/ Roman S. Gribbs
/s/ Richard Allen Griffin