STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ISAAC THOMAS,

Defendant-Appellant.

UNPUBLISHED
October 23, 2008

No. 279439
Oakland Circuit Court
LC No. 06-206294-FH

Before: Servitto, P.J., and Donofrio and Fort Hood, JJ.

PER CURIAM.

Defendant appeals by leave granted from his jury trial convictions of possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), possession of marijuana, second offense, MCL 333.7403(2)(d), felon in possession of a firearm, MCL 750.224f, possession of a controlled substance analogue, MCL 333.7403(2)(b)(ii), and four counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to four concurrent terms of two years' imprisonment for the felony-firearm convictions and consecutive terms of two to forty years' imprisonment for the possession with intent to deliver cocaine conviction, two to forty years' imprisonment for the felon in possession conviction, one to two years' imprisonment for the possession of marijuana conviction, and one to fifteen years' imprisonment for the possession of a controlled substance analogue conviction. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that the elicitation of opinion testimony from Officer Janczarek constituted error requiring reversal. Because defendant did not object to the admission of the challenged testimony, "he must demonstrate plain error affecting his substantial rights, meaning that he was actually innocent or that the error seriously affected the fairness, integrity, or public reputation of the judicial proceedings independent of his innocence." *People v Knox*, 469 Mich 502, 508; 674 NW2d 366 (2004).

After carefully reviewing the record, we reject defendant's assertion that Officer Janczarek's testimony constituted impermissible drug profile evidence. Officer Janczarek did not testify, and the prosecutor did not argue, that defendant was likely to be a drug dealer because defendant exhibited certain personal characteristics that are commonly exhibited by drug dealers. Rather, Officer Janczarek opined that the amount of the cocaine; the presence of various

other items such as scales, razor blades, and sandwich baggies; and the absence of pipes and other paraphernalia associated with use indicated an intent to distribute.

Such testimony did not violate defendant's rights. A prosecutor may use expert testimony from police officers to aid the jury in understanding the evidence in controlled substance cases. *People v Murray*, 234 Mich App 46, 53; 593 NW2d 690 (1999). The fact that the testimony embraces the ultimate issue of intent to deliver does not render the evidence inadmissible. *People v Stimage*, 202 Mich App 28, 30; 507 NW2d 778 (1993). Moreover, the trial court instructed the jury that it did not have to accept Officer Janczarek's opinion testimony.

Defendant also asserts error because Officer Janczarek opined that defendant was staying in the Waterford apartment that had been the subject of the search. Officer Janczarek based this opinion on the presence of various personal items, correspondence addressed to defendant, important documents such as a bridge card and social security card, and clothing in defendant's size. We find no error. Officer Janczarek's opinion was not based on improper profile evidence, but rather on his assessment of the assorted items found in the apartment. Because the opinion was not based on Officer Janczarek's expert knowledge of drug trafficking, it constituted a lay opinion. In general, police officers may provide lay opinions about matters that are not overly dependent on scientific, technical, or specialized knowledge. *People v Oliver*, 170 Mich App 38, 49-50; 427 NW2d 898 (1988), modified on other grounds 433 Mich 862 (1989). Officer Janczarek's opinion was rationally based on his perception and was helpful to the determination of a fact at issue. Accordingly, it was properly admitted as lay witness testimony. See MRE 701; *People v Yost*, 278 Mich App 341, 358-359; 749 NW2d 753 (2008).

Defendant also claims that the felony-firearm conviction predicated upon the offense of possession of marijuana must be vacated because, pursuant to MCL 333.7403, possession of marijuana is specifically designated as a misdemeanor. We disagree.

As defendant notes, possession of marijuana is expressly designated as a misdemeanor under the Public Health Code. However, this Court has explicitly stated that the provisions of the Penal Code, MCL 750.1 *et seq*., govern whether a particular offense is a felony for purposes of the felony-firearm statute. See *People v Baker*, 207 Mich App 224, 225; 523 NW2d 882 (1994). Thus, contrary to defendant's argument, the designation of the offense of possession of marijuana as a misdemeanor in the Public Health Code is irrelevant in determining whether the crime constitutes a felony for purposes of the Penal Code.

The Penal Code provides, "The term 'felony' *when used in this act*, shall be construed to mean an offense for which the offender, on conviction may be punished by death, or by imprisonment in state prison." MCL 750.7 (emphasis added). Because defendant's conviction of possession of marijuana, second offense, was punishable by imprisonment for up to two years, MCL 333.7413(2), we find that it constitutes a felony under the Penal Code. The felony-firearm conviction based on the predicate conviction of possession of marijuana, second offense, is

therefore valid.

Affirmed.

/s/ Deborah A. Servitto
/s/ Pat M. Donofrio
/s/ Karen M. Fort Hood