STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BOBBY ARNOL NEAL,

Defendant-Appellant.

UNPUBLISHED
October 29, 1996

No. 174643
LC No. 93-049603-FH

Before: Holbrook, Jr., P.J., and Saad and W.J. Giovan,* JJ.

PER CURIAM.

Defendant was convicted by a jury of possession of less than fifty grams of heroin with the intent to deliver, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). He subsequently pleaded guilty of being an habitual offender, fourth offense, MCL 769.12; MSA 28l.1084, and was sentenced to serve an enhanced prison term of five to twenty-five years. He appeals as of right and we affirm.

Defendant first argues that the trial court clearly erred in denying his motion to suppress the evidence seized from the search of his home. Defendant alleges that the search and seizure were illegal because, contrary to an averment in the underlying affidavit, "the 'observing officer' did not see the 'unwitting subject' actually enter the [defendant's] home." We find this argument to be wholly without merit. Contrary to defendant's implication, Officer Gary Mastin was the affiant and Trooper Deborah House was the informant. In ¶ 9 of the affidavit, Mastin averred that, on July 26, 1993, House paid $60 to Olga Pulido and "[t]hat *your affiant* and fellow FANG officers observed Pulido enter the residence, remain inside a short time, and return to the vehicle occupied by Tpr. House." Accordingly, there is no basis for defendant's claim that the affidavit contained a known falsehood. The trial court did not err in finding that the affidavit complied with MCL 780.653; MSA 28.1259(3), and that the search and seizure were supported by probable cause.

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

Defendant's next argument is as follows, in its entirety:

> Michigan Court Rule 6.425(F)(2), as amended, which excepts transcripts of the voir dire is an unconstitutional deprivation of due process. *People v Hampton,* 89 Mich App 434 (1979); *Vritt [sic, Britt] v N. Carolina,* 404 US 226; 92 S Ct 431; 30 L Ed 2d 400 (1971). (Both cases deals [sic] with a prior trial[.]) It is submitted that the policy on appeals should be the same. Fifth Amendment, US Constitution; Article 1 Sec. 17 Mich Const of 1963.
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> The standard of review is de novo, construction of law. *Seals v Henry Ford Hospital,* 123 Mich App 329 (1983)[.] [Appellant's Brief on Appeal, 5/2/95, p 4.]

Although it is tempting to read between the lines of defendant's brief and create a cogent argument from the cursory and nearly incomprehensible argument above, we will not do so. Suffice it to say that defendant has failed to satisfy his heavy burden of establishing that MCR 6.425(F)(2) violates the constitutional precepts of due process or equal protection of the law.[1] In any event, the "record of sufficient completeness" contemplated by *Griffin v Illinois*, 351 US 12; 76 S Ct 585; 100 L Ed 891 (1956), comprehends only those matters germane to points raised on appeal. See *Mayer v City of Chicago*, 404 US 189; 92 S Ct 410; 30 L Ed 2d 372 (1971); *Bradley v Texas*, 470 F2d 785 (CA 5, 1972); *Maxville v Oklahoma*, 629 P2d 1279 (Ct Crim App, 1981). Here, defendant alleges no error during voir dire such that a copy of the transcript was necessary to vindicate any substantial right.

Defendant next argues that his trial counsel was ineffective for failing to urge the trial court to enhance defendant's sentence under the provisions of the controlled substances act, MCL 333.7413(2); MSA 14.15(7413)(2), rather than under the habitual offender statutes, MCL 769.12; MSA 28.1084.[2] As conceded by defendant, this issue is without merit in light of *People v Primer*, 444 Mich 269; 506 NW2d 839 (1993).

Next, we find no abuse of discretion by the trial court in qualifying Officer Mastin as an expert witness regarding the possession and trafficking of illegal drugs. Pursuant to MRE 702, a qualified expert witness may testify in the form of an opinion if it will assist the trier of fact to understand the evidence or to determine a fact in issue. In this case, an issue of fact was presented whether the heroin found at defendant's home was intended to be delivered to others. Given the amount of heroin seized, the manner in which it was packaged, and the other drug paraphernalia found at the home, Mastin opined that the seized heroin was packaged and intended for sale. We find no abuse of discretion by the trial court in permitting Mastin, a knowledgeable and experienced drug enforcement official, to testify as an expert witness. See *People v Stimage*, 202 Mich App 28, 29-30; 507 NW2d 778 (1993).

Defendant's final contention is that he is entitled to an evidentiary hearing regarding the accuracy of certain information in the presentence report. In response to defendant's challenge to the accuracy of the statement in the report, the trial court expressly stated on the record that it considered the

information to be irrelevant to the sentencing decision. Hence, remand for an evidentiary hearing is unnecessary.[3]

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Henry W. Saad
/s/ William J. Giovan

[1] We further note that the Michigan Supreme Court has recently declined to address the merits of this issue when it denied leave to appeal in *People v Walker*, 450 Mich 915; 542 NW2d 866 (1995).

[2] Under this issue, appellate counsel's brief misstates the facts of defendant's conviction and sentence.

[3] Although defendant is not entitled to an evidentiary hearing on the challenged statement, he ordinarily would be entitled to have the statement stricken from the report. See MCR 6.425(D)(3); *People v Britt*, 202 Mich App 714, 718; 509 NW2d 914 (1993). Defendant has not asked for this relief. Nonetheless, our decision to affirm the conviction and sentence is without prejudice to defendant bringing a motion in the trial court to strike the challenged statement pursuant to MCR 6.425(D)(3).