STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANDRES COLMINES,

Defendant-Appellant.

UNPUBLISHED
November 1, 1996

No. 176384
LC No. 93-013326

Before: Taylor, P.J., and Markey and Holowka,* JJ.

PER CURIAM.

Defendant was convicted by a jury of possession with intent to deliver 650 grams or more of cocaine, MCL 333.7401(2)(a)(i); MSA 14.15(7401)(2)(a)(i), and sentenced to a term of mandatory life imprisonment without parole. He appeals as of right. We affirm.

The trial court did not clearly err in denying defendant's request for disclosure of the identity of the confidential informant or for an in camera hearing to determine whether the informant could offer testimony favorable to the defense. The identity of a person who furnishes information of criminal activity need not be disclosed absent a showing that disclosure "is relevant and helpful to the defense of an accused, or is essential to a fair determination of the cause." *Roviaro v United States*, 353 US 53, 59, 61; 77 S Ct 623; 1 L Ed 2d 639 (1957); *People v Underwood*, 447 Mich 695, 703-704; 526 NW2d 903 (1994). In this case, the record does not support defendant's claim that the informant was a res gestae witness, see *People v Carter*, 415 Mich 558, 591; 330 NW2d 314 (1982), or was otherwise "central to [his] prosecution." The basis for defendant's prosecution was the November 10, 1993, police discovery of cocaine inside defendant's automobile and inside the two residences at Plainview and Powers that defendant visited on the date of his arrest. There is no indication in the record that the informant either witnessed or participated in the events of November 10, 1993. We therefore find that defendant failed to demonstrate a possible need to know the informant's identity, and the court did not err in denying defendant's motion to produce the informant. Cf. *Rovario, supra* at

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

64-65; see also *United States v Mendoza-Salgado*, 964 F2d 993, 1000-1001 (CA 10, 1992); *United States v Martinez*, 922 F2d 914, 920-921 (CA 1, 1991).

We also reject defendant's claim that he was entitled to production of the informant for the purpose of challenging the veracity of the factual allegations contained in the search warrant affidavit. Although defendant alleged that the informant did not exist, he failed to make any offer of proof in connection with this allegation. He also failed to reasonably explain the absence of any supporting affidavits or reliable statements of witnesses in support of his position. Accordingly, defendant failed to satisfy the threshold requirement for production of the informant. See *Franks v Delaware*, 438 US 154, 155-156; 98 S Ct 2674; 57 L Ed 2d 667 (1978); *People v Poindexter*, 90 Mich App 599, 609; 282 NW2d 411 (1979).

Although defendant objected to the trial court's jury instructions regarding the concept of "knowing possession," he did not object to the instructions insofar as they discussed the concept of "constructive possession," which is the basis for defendant's challenge on appeal. Because an objection based on one ground is insufficient to preserve an appellate attack based on a different ground, appellate review of this issue is precluded absent manifest injustice. *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993); *People v Stimage*, 202 Mich App 28, 30; 507 NW2d 778 (1993). In this case, manifest injustice has not been shown, thus precluding review.

Next, we reject defendant's claim that his two statements describing the existence and location of the cocaine (inside his car and inside his house) were "the product of coercion" and, therefore, involuntary. Although some of the officers had their weapons drawn as they approached defendant's vehicle in order to effect the arrest, the record is devoid of any evidence that the weapons were drawn for non-precautionary purposes. Moreover, the statements at issue were made after defendant was removed from his vehicle and advised of his constitutional rights; Sgt. McNamara testified that the other officers no longer had their weapons drawn at this point. Notably, defendant presented no contrary testimony. Thus, the record does not indicate that the weapons were drawn for the purpose of coercing defendant or extracting a statement. Accordingly, the totality of circumstances leads us to conclude that defendant's statements were freely and voluntarily made. *People v Krause*, 206 Mich App 421, 423; 522 NW2d 667 (1994); *People v Etheridge*, 196 Mich App 43, 57; 492 NW2d 490 (1992).

Regarding defendant's claim that the police acted improperly by continuing to question him after he invoked his right to counsel, *People v Myers*, 158 Mich App 1, 8; 404 NW2d 677 (1987), defendant does not identify in his brief any statement that allegedly was erroneously admitted in violation of this rule. Accordingly, we have no basis for considering this claim.

We also reject defendant's claim that the police lacked probable cause to effectuate an arrest. The nature and detail of the information supplied by the informant, the informant's past history of reliability, the independent police corroboration of the informant's predictions, and the information gained through several days of police surveillance, when considered in their totality, supported a finding of probable cause for arrest. See *People v Faucett*, 442 Mich 153, 165-166, 168-169; 499 NW2d 764 (1993); *People v Collier*, 183 Mich App 473, 475-476; 455 NW2d 313 (1989); cf. *People v Thomas*, 191 Mich App 576, 579; 478 NW2d 712 (1991). Further, the trial court did not clearly err

in ruling that the initial warrantless entry into the Plainview residence was constitutionally permissible pursuant to the exigent circumstances exception to the warrant requirement. *In re Forfeiture of $176,598*, 443 Mich 261, 271-272; 505 NW2d 201 (1993); *People v Burrell*, 417 Mich 439, 448; 339 NW2d 403 (1983).

Next, we believe that the record does not support defendant's claim that he was improperly prevented from calling additional witnesses at the pretrial evidentiary hearing. On the contrary, the record indicates that defendant was expressly offered an opportunity to call additional witnesses, but he elected not to do so. Moreover, while we are somewhat troubled by the trial court's preparation of a written decision in advance of the evidentiary hearing, we conclude that defendant is not entitled to relief for three reasons. First, after referring to the written decision, the trial court thereafter permitted defendant to present additional evidence while remarking that it would "reserve judgment" on the matter. Second, at the conclusion of the evidentiary hearing, the trial court granted defendant's request to submit a brief based on the evidence adduced at the hearing and indicated that it would not foreclose the possibility of granting the relief requested, if warranted. There is no indication in the record that defendant ever submitted the supplemental brief. Third, the only witness who testified at the evidentiary hearing was Sgt. McNamara. His testimony, standing alone, failed to establish grounds for relief, and defendant failed to present any contradictory evidence despite being offered the opportunity to do so. Under these circumstances, we find that appellate relief is not warranted. *People v Collier*, 168 Mich App 687, 698; 425 NW2d 118 (1988).

Viewed in context, the trial court's comments and conduct at trial did not pierce the veil of judicial impartiality so as to unduly influence the jury. Thus, defendant was not deprived of his right to a fair and impartial trial, and defendant is not entitled to reversal on this basis. Cf. *Collier, supra* at 697-698.

We also reject defendant's claim that the evidence was insufficient to prove intent to deliver. The amount of cocaine involved, the amount of money seized, the presence of empty "kilo wrappers," along with other circumstantial evidence in the case, viewed in a light most favorable to the prosecution, was sufficient to enable a rational trier of fact to infer an intent to deliver beyond a reasonable doubt. *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979); *People v Ray*, 191 Mich App 706, 708; 479 NW2d 1 (1991).

Finally, we find that defendant's mandatory life sentence is not unconstitutionally cruel or unusual. *Harmelin v Michigan*, 501 US 957; 111 S Ct 2680; 115 L Ed 2d 836 (1991); *People v Lopez*, 442 Mich 889; 498 NW2d 251 (1993); *People v Poole*, ___ Mich App ___; ___ NW2d ___ (Docket Nos. 169867, 169987 issued September 17, 1996), slip op at 6.

Affirmed.

/s/ Clifford W. Taylor
/s/ Jane E. Markey
/s/ Nick O. Holowka