STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRENCE ALLEN WALKER,

Defendant-Appellant.

UNPUBLISHED
January 24, 1997

No. 158989
Berrien Circuit Court
LC No. 92-002142-FH

Before: White, P.J., and Sawyer and R.M. Pajtas,* JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of possession of between 225 and 650 grams of cocaine. MCL 333.7403(2)(a)(ii); MSA 14.15(7403)(2)(a)(ii). He was sentenced to twenty to thirty years in prison. He now appeals and we affirm.

Defendant first argues that the trial court erred in denying his motion to suppress. We disagree. The trial court correctly ruled that defendant lacked standing to challenge the search because he lacked a possessory interest in the automobile, thus having no reasonable expectation of privacy in the automobile. See *People v Mamon*, 435 Mich 1; 457 NW2d 623 (1990); *Rakas v Illinois,* 439 US 128; 99 S Ct 421; 58 L Ed 387 (1978). Further, the discovery of the drugs in the grocery bag was not a fruit of any unlawful detention of defendant.

Defendant next argues that he was denied a fair trial because the trial court essentially directed a verdict on one of the elements. However, this issue was not preserved for appeal by the appropriate objection at trial. *People v Van Dorsten*, 441 Mich 540; 464 NW2d 737 (1993). Moreover, because the amount of drugs was undisputed, and, indeed, was mentioned by defense counsel in closing argument, there is no manifest injustice.

Next, defendant argues that the trial court failed to properly instruct the jury on constructive possession and erroneously gave a supplemental instruction on aiding and abetting. These claims were

---

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

not preserved by appropriate objection at trial. *Van Dorsten, supra*. It appears that after the court completed its instructions, it called for a bench conference. Immediately thereafter, the court stated:

> *The Court:* Ladies and gentlemen, I have been instructed to give you one further instruction in this case. I've been asked by counsel to bring this in even though it—this—this case is really a case that involves a kind of a double theory of the Prosecutor, I guess you would say. On the one hand that the defendant is charged as being a principle in the case, that is, that he was directly involved in exercising dominion and control over this—this substance himself. On the other hand, it could be argued that the defendant was also an aider and abettor, that—that if he was not the principle [sic] prime mover, he was aiding and abetting, assisting, other people involved in the—in the offense that we're dealing with here. I don't think the Prosecutor is really arguing the aiding and abetting but let me just give you one additional instruction that relates to that issue and that is, even if the defendant knew that an alleged crime was planned or was being committed, the mere fact that he was present when it—when it was committed is not enough to prove that he assisted in committing it. In other words, he has to have done something himself to further the activities of the—of the criminal behavior, mere presence alone on his part doesn't make him guilty.

Defense counsel and the prosecutor then expressed satisfaction with the instruction. Shortly thereafter, the court inquired:

> *Mr. Cherry:* No, no objection.
>
> *The Court:* On behalf of the Defense?
>
> *Mr. Renfro:* No, your Honor.

During deliberations, the jury requested to be instructed on aiding and abetting. With the consent of the prosecutor and defense counsel, the court gave the aiding and abetting instruction. Defendant did not object to the instruction until after the verdict was rendered. This belated objection was untimely. Additionally, defendant's argument is based upon the premise that he was originally charged only with being a principal. However, a defendant charged as a principal may be convicted as an aider and abettor. *People v Turner,* 213 Mich App 558, 568; 540 NW2d 728 (1995).

We next consider arguments raised by defendant that he received ineffective assistance of counsel. In both his main brief on appeal and in his supplemental in propria persona brief, defendant identifies various examples of claimed ineffectiveness. We have carefully considered the various claims raised by defendant. We conclude that several of the claimed errors address matters of reasonable trial strategy and that in no case does defendant persuade us that, but for the claimed errors, there is a reasonable probability that the outcome of the trial would have been different. See *People v Pickens*, 446 Mich 298, 314; 521 NW2d 797 (1994).

Next, defendant argues that he is entitled to be resentenced because the trial court failed to recognize his authority to downward depart from the mandatory minimum sentence. However, defendant did not first raise this issue in the trial court, therefore we decline to consider it on appeal.

Turning to issues raised in defendant's supplemental brief in propria persona, defendant argues that he was denied a fair trial because the prosecutor allowed false testimony from his witness to go uncorrected. However, not only was this issue not raised in the trial court, the witness was, in fact, impeached by his inconsistent testimony at trial. It was for the jury to decide if they believed the witness or not.

Defendant also argues that the trial court did not properly instruct the jury concerning a witness' plea bargain. However, this issue has not been preserved by the appropriate objection in the trial court. *Van Dorsten*, *supra*. Further, the trial court's instruction was sufficient.

Affirmed.

/s/ David H. Sawyer
/s/ Richard M. Pajtas