

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JASON CARL FARMER,

Defendant-Appellant.

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UNPUBLISHED  
October 28, 1997

No. 192277  
Genesee Circuit Court  
LC No. 93-048662-FH

Before: Young, P.J., and Markman and Smolenski, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). Defendant was sentenced to four to twenty years' imprisonment. Defendant appeals as of right. We affirm.

Defendant argues that the trial court erred when it admitted the tapes of conversations between himself and police informant Jeremy Standley without a proper foundation. We disagree. With the exception of Exhibit 2, defendant failed to object that no foundation had been established. Therefore, we decline to review the issue. *People v Dowdy*, 211 Mich App 562, 570; 536 NW2d 794 (1995). Moreover, Standley identified the voices on all of the tapes as being those of himself and defendant. There was no question at trial as to whose voices were on the tapes. MRE 901(a). Regarding Exhibit 2, the recording of October 28, 1992, we find that the trial court properly ruled that the fact it was a partial recording of a conversation goes to its weight, not its admission. *People v Berkey*, 437 Mich 40, 52; 467 NW2d 6 (1991).

Next, defendant argues that the trial court erred in admitting the taped conversations because (a) the tapes did not specifically refer to a delivery of cocaine by defendant on November 13, 1992 and were therefore irrelevant; and (b) the tapes contained numerous references by defendant to the use of illegal drugs and other criminal acts for which defendant was not charged. Therefore, the court erred in admitting the tapes because they were unfairly prejudicial. We disagree with both arguments.

Pursuant to MRE 404(b), evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity with such character, although it may be

admissible to show motive, opportunity, intent, preparation, scheme, plan, or system in doing an act. MRE 404(b); MCL 768.27; MSA 28.1050; *People v Gibson*, 219 Mich App 530, 532; 557 NW2d 141 (1996). The evidence must be relevant to an issue other than propensity under Rule 404(b) to protect against the introduction of extrinsic evidence when that evidence is offered solely to prove character. The evidence must both be relevant, MRE 402, and the probative value of the evidence must not be substantially outweighed by the danger of unfair prejudice. MRE 403; *People v VanderVliet*, 444 Mich 52, 74-77; 508 NW2d 114 (1993). Upon request, the trial court should generally provide a limiting instruction under Rule 105. *Id.*

The relationship of the elements of the charge, the theories of admissibility, and the defenses asserted govern what is relevant and material. *Id.* Defendant was convicted of delivery of less than fifty grams of cocaine in violation of MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). “Delivery” is defined as the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship. MCL 333.7105(1); MSA 14.15(7105)(1). See *People v Potra*, 191 Mich App 503, 510-511; 479 NW2d 707 (1991). The prosecutor offered the tapes into evidence because he believed that the conversations were all part of the crime and because they were relevant to defendant’s opportunity, intent, preparation, plan, and knowledge in committing the act, in light of the defendant’s theory of the case. Defendant’s counsel told the court that his theory was that defendant *purchased* cocaine for his own personal use from Standley, the confidential informant, and did not *deliver* it to Standley.

Following a review of the transcripts of the taped conversations contained in the record, we find that the tapes were offered for a relevant purpose, to show defendant’s intent, preparation or plan to deliver cocaine to Standley. In order to be relevant, it is not necessary that the conversations specifically refer to defendant’s delivery of cocaine on November 13, 1992.

Although defendant refers to LSD and not cocaine in the conversation of October 28, 1992, the conversation nevertheless demonstrated defendant’s intent or plan to obtain illegal drugs *for* Standley, and not vice-versa, as defendant argued. The conversations of November 1, 1992, November 10, 1992, and November 13, 1992, indicate that it was Standley who was requesting the drugs from defendant, and it was defendant who was making calls to obtain such drugs. Defendant asked Standley specifically how much drugs he wanted. He then told Standley that he had the deal worked out and told Standley to pick him up to consummate the deal. These conversations specifically refer to defendant’s plan or intent to deliver cocaine to Standley, including the amount of cocaine-- three and a half grams-- and a specific date and time for the transaction. Therefore, the conversations were relevant for a purpose other than demonstrating defendant’s character. As for the second part of the relevancy test, the question of whether it was defendant or Standley who delivered the drugs to the other was the central fact at issue during the trial.

We also believe that the probative value of the conversations on the tapes was not substantially outweighed by the danger of unfair prejudice resulting from the references to other incidents of defendant’s drug use under MRE 403. The taped conversations included repeated references to other incidents of illegal drug use by defendant, specifically defendant talking about smoking marijuana and taking acid. However, given defendant’s theory that the cocaine was purchased from Standley for his

own personal use, the fact that he smoked marijuana and took acid did not add significantly to his own admission of using drugs.

Defendant also discussed prior incidents during which he stole beer and food. Although evidence that defendant stole beer and food may have created a danger of unfair prejudice, we find that any possible error in admitting this aspect of the tape was harmless. Defendant was not charged with any offenses involving theft and we believe that it was highly improbable that this evidence contributed in any way to defendant's conviction for delivery of cocaine. Standley's testimony that defendant supplied him with cocaine and the taped conversations between Standley and defendant provided independently sufficient evidence of defendant's guilt. See *People v Mateo*, 453 Mich 203; 551 NW2d 891 (1996); *People v Humphreys*, 221 Mich App 443, 448; 561 NW2d 868 (1997).

Finally, we note that the trial court instructed the jury regarding the limited purpose for which they could consider evidence of other improper acts by defendant. Accordingly, the trial court did not abuse its discretion in admitting the tapes into evidence.

Next, defendant argues that the trial court erred in permitting the jury to view the prosecution's allegedly inaccurate transcripts of the taped conversations. We note that there was no stipulation as to the accuracy of the transcripts. The transcriber did not testify at trial to verify that he or she had listened to the tape and accurately transcribed its content. The prosecutor stated that he had the tapes transcribed by a secretary at the police unit which investigated defendant. There is no indication that the trial court independently determined the accuracy of the transcript by comparing it to the tapes, prior to the jury hearing the tapes and viewing the transcript at trial. Such procedures should best have been followed. See *People v Lester*, 172 Mich App 769, 774-776; 432 NW2d 433 (1988). However, if any error occurred, it was clearly harmless. The transcripts viewed by the jury were not introduced as evidence. They were used solely as a guide to following the conversations on the tapes. Further, the jury was not permitted to take the transcripts into the jury room. Again we believe that the evidence of defendant's guilt even without the use of the allegedly inaccurate transcripts was independently sufficient to support his conviction.

Next, defendant argues that defendant was sentenced more than one year after entering a guilty plea and, therefore, that the trial court lacked jurisdiction at the time to sentence him. We find defendant's argument to be without merit. Jurisdiction is a question of law that this Court reviews de novo. *Bruwer v Oaks (On Remand)*, 218 Mich App 392, 395; 554 NW2d 345 (1996). In most cases, a court may delay the imposition of a sentence for a period not exceeding one year for the purpose of providing a defendant with the opportunity to demonstrate his eligibility for probation or other leniency compatible with the ends of justice and the rehabilitation of the defendant. *People v Scott*, 216 Mich App 196, 199; 548 NW2d 678 (1996); MCL 771.1; MSA 28.1131. Beyond that period, the trial court loses jurisdiction to sentence the defendant, unless good cause is shown for the delay. *People v Boynton*, 185 Mich App 669, 671; 463 NW2d 174 (1990).

In the instant case, defendant was sentenced on December 26, 1995, more than two years after entering his conditional plea on December 8, 1993. While more than one year elapsed between the conditional guilty plea and sentencing, there was sufficient cause for the delay. Defendant's counsel

himself requested the delay on January 19, 1994 in order for defendant to stand trial on other criminal charges. A defendant may waive the one-year requirement and consent to the personal jurisdiction of the court for the purpose of sentencing. *People v Richards*, 205 Mich App 438, 445; 517 NW2d 823 (1994). Moreover, defendant's guilty plea was *conditional*. It was conditioned upon the trial court's compliance with the agreement. That condition was never satisfied, as the court stated it could not comply with the agreement. Therefore, because a final plea agreement never existed, defendant could not be sentenced until he was convicted. Defendant effectively withdrew his conditional guilty plea on August 10, 1995, when his counsel stated that defendant would rather withdraw his plea and proceed to trial if the court was inclined to sentence him to a prison term. The court stated it could not in good conscience agree to a sentence of probation and that the parties had reached the point to proceed to trial. Therefore, there was no conviction arising from the conditional plea of December 8, 1993, for which defendant was to be sentenced. Defendant subsequently withdrew his conditional plea. The one-year period following his conviction did not start until defendant was convicted on November 15, 1995, following a jury trial. Defendant was sentenced on December 26, 1995, well within the one-year limit this Court discussed in *Scott*. Accordingly, the trial court did not lose jurisdiction to sentence defendant.

Affirmed.

/s/ Robert P. Young, Jr.

/s/ Stephen J. Markman

/s/ Michael R. Smolenski