

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MONTEZ D. PROFIT,

Defendant-Appellant.

UNPUBLISHED

May 21, 2002

No. 228726

Wayne Circuit Court

LC No. 98-014096

Before: Smolenski, P.J., and Neff and White, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of possession with intent to deliver 50 to 225 grams of cocaine, MCL 333.7401(2)(a)(iii), and possession with intent to deliver less than fifty grams of heroin, MCL 333.7401(2)(a)(iv). Defendant was sentenced to ten to twenty years' imprisonment for the cocaine conviction and one to twenty years' imprisonment for the heroin conviction, the sentences to run concurrently. We affirm.

Defendant first argues that the prosecution failed to present sufficient evidence to prove that defendant had constructive possession of the cocaine. We disagree. This Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could have found that the element of possession was proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, mod 441 Mich 1201 (1992).

To establish possession with intent to deliver the prosecution was obligated to prove that defendant knowingly possessed the cocaine with intent to deliver it to someone else. *People v Crawford*, 458 Mich 376, 389; 582 NW2d 785 (1998). Actual physical possession of the cocaine is not necessary; constructive possession is sufficient. *People v Konrad*, 449 Mich 263, 271; 536 NW2d 517 (1995). Constructive possession is established by showing that the defendant had dominion or control over the controlled substance, or the authority to possess it. *Id.* Circumstantial evidence and reasonable inferences arising from that evidence can be used to establish the elements of a crime. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).

Here, the cocaine was found in a locked safe, at defendant's address, together with a scale and parking tickets and court documents with defendant's name and address printed thereon. It is reasonable to infer that defendant put the documents in the safe and that all the contents of the safe were under defendant's control. *People v Lewis*, 178 Mich App 464; 444 NW2d 194

(1989), upon which defendant relies, does not compel a different result. In *Lewis*, the defendant only had access to the house from which he and others sold drugs; he did not actually live there. *Lewis, supra* at 469. In this case, the prosecutor introduced evidence that defendant actually lived and received mail at the house where the drugs were found. More important, the evidence showed that the drugs here were found in a locked safe, which also contained documents belonging to defendant. This evidence was sufficient to support an inference that defendant had constructive possession of the contents of the safe, including the cocaine.

Defendant next argues that he was denied a fair trial by the introduction of evidence regarding an ongoing homicide investigation. Defendant did not object to the introduction of this evidence at trial. However, this Court may review unpreserved claims of constitutional error. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). To avoid forfeiture, the error must be plain, i.e., clear and obvious, and affect the defendant's substantial rights. *Id.* "Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error is seriously affect[ed] the fairness, integrity, or public reputation of judicial proceedings independent of the defendant's innocence," *Id.* at 763.

The prosecution introduced evidence of the homicide investigation in order to explain why the police were executing a search warrant at defendant's address, and why defendant gave a statement to police admitting that he sold drugs. The homicide investigation was background information intended to give the jury the context in which the drug seizure and statement were made. See *People v Sholl*, 453 Mich 730, 741; 556 NW2d 851 (1996); *People v Delgado*, 404 Mich 76, 83; 273 NW2d 395 (1978); *People v Aldrich*, 246 Mich App 101, 115; 631 NW2d 67 (2001). Most of the police officers who testified identified themselves as being assigned to the homicide division. It would have been practically impossible to eliminate any mention of the homicide investigation from this case, and defendant did not seek to have the officers' testimony circumscribed in relation to the homicide.

Furthermore, defendant actually made good use of the homicide investigation testimony. Defendant was able to elicit testimony from the police officers that they had no reason to suspect that drugs would be found at the house and that defendant was not known to them as a drug dealer. Also, defendant established that no evidence was found linking him to the homicide and that he was never charged with the homicide.

We conclude that any error resulting from this evidence did not affect the outcome of the case, and reversal is not warranted. *Carines, supra* at 763.

Lastly, defendant argues that the admission of police officer "expert" testimony regarding the possession and sale of cocaine denied defendant a fair trial. This issue also was not preserved for appeal, and we review it for plain, prejudicial error under *Carines, supra* at 763.

Drug profiling, or describing the common characteristics of drug dealers and then relating those characteristics to the defendant, is impermissible as substantive evidence. *People v Hubbard*, 209 Mich App 234, 241-242; 530 NW2d 130 (1995). On the other hand, expert testimony by police officers regarding matters not within a layman's knowledge may aid the jury in resolving the ultimate questions in the case, and is permissible. *People v Ray*, 191 Mich App 706, 708; 479 NW2d 1 (1991). The use of expert testimony to offer the jurors information about the drug trade from which to analyze the evidence presented in the case is proper as long as

innocent characteristics are not themselves offered as evidence of guilt. *People v Murray*, 234 Mich App 46, 63; 593 NW2d 690 (1999).

In this case, the testimony about the packaging of the cocaine and the significance of the scale was background information related to drug dealing that the average juror would not know. The officer simply testified that the manner in which the drugs were packaged indicated that they were for sale, and that the scale could be used to weigh the amounts for sale. The officer did not take innocent characteristics of defendant and compare them with those of drug dealers. The officer did not give any opinion about the ultimate issue of defendant's guilt. Defendant has not shown that the introduction of police testimony explaining the evidence found in the safe in defendant's house was a plain error affecting his substantial rights.

Affirmed.

/s/ Michael R. Smolenski

/s/ Janet T. Neff

/s/ Helene N. White