

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALVIN ANTONIO JONES,

Defendant-Appellant.

UNPUBLISHED

October 16, 2007

No. 271039

Muskegon Circuit Court

LC No. 05-052215-FH

Before: Whitbeck, C.J., and Talbot and Fort Hood, JJ.

PER CURIAM.

Defendant, Alvin Antonio Jones, appeals as of right from his jury trial convictions for manufacturing/delivery of 50 grams or more but less than 450 grams of the controlled substance cocaine, MCL 333.7401(2)(a)(iii), and inducing a minor to commit a drug offense, MCL 333.7416. Defendant was sentenced as a fourth habitual offender, MCL 769.12, to 24 to 50 years' imprisonment on the delivery of cocaine conviction and 10 to 20 years' imprisonment on the inducing a minor conviction. We affirm.

I. Background

Defendant's arrest arose following events that transpired on August 16, 2005. Based on information provided by a confidential informant that substantial amounts of cocaine were maintained at 1953 Valley Street, Muskegon, Michigan, Muskegon police and the West Michigan Enforcement Team (WMET) began monitoring the residence in June 2005. Monitoring consisted of periodic drives past the residence to observe vehicles and individuals present. The identified location is the residence of defendant's former girlfriend and the mother of his two small children, Takah Golden.¹ Defendant does not live at this address but routinely visits his children at this location. The confidential informant told police that he/she had personally observed defendant with "large quantities" of cocaine at the residence within the past three weeks and believed that "there is currently cocaine at said residence."

¹ Golden was also charged with possession with intent to deliver 50 grams or more, but less than 450 grams of cocaine and possession of marijuana (Muskegon Circuit Court Docket No. 05-052214-FH).

Police were monitoring Golden's home from a parked vehicle outside the residence. Present in the residence were defendant's sisters, Laketia Jones, Sharonda Johnson and Seaniece Johnson, who was babysitting Golden's minor children while Golden was at work. Also present at the home was Precious McMillan, the daughter of defendant's aunt, Ora McMillan. Shortly before defendant arrived at 1953 Valley Street, at 5:10 p.m. a gold Saturn vehicle appeared at the residence driven by an older black female and registered to Ora McMillan. Police officers conducting surveillance of the home noted that McMillan remained in the driver's seat of the vehicle while speaking with another black female outside the residence.

Detective Keith Stratton observed defendant arrive at the residence in a blue Ford SUV at 5:14 p.m. on August 16, 2005. This vehicle had been rented a few hours earlier by defendant's current girlfriend, Shakira Bradford. Defendant entered the residence and left in the same vehicle shortly thereafter. Although disputed by McMillan, police officers testified that the gold Saturn departed the residence before defendant returned to his rental vehicle and drove away. Stratton radioed information regarding his observation of defendant to Sergeant Tim Lewkowski and followed defendant's vehicle. Police were aware that defendant did not possess a valid driver's license and believed that he had outstanding traffic warrants. Lewkowski requested Muskegon police officer Thomas Parker to effectuate a stop of defendant's vehicle. Parker observed defendant driving the identified vehicle and determined that the car was traveling 36 mph in a 30 mph zone. Defendant was speaking on a cell phone when stopped by Parker. Parker had defendant exit the vehicle and arrested him for failing to have a driver's license and placed him in the back of his patrol car.

When searching defendant, Parker found a cell phone and cash amounting to \$1,967 in defendant's front pants pockets. Parker also located two additional cell phones and a Hertz rental agreement, executed by defendant's current girlfriend, Shakira Bradford, in the front passenger area. Parker observed a blue duffel bag in the rear open hatch area of the vehicle. Parker opened the duffel bag and found, in addition to miscellaneous clothing items, a white plastic shopping bag containing an additional \$38,955 in various cash denominations. Parker indicated that the bag emitted an odor of cat urine, consistent with the presence of cocaine. However, no drugs or drug paraphernalia were found in the vehicle either at the traffic stop site or when the vehicle was more thoroughly searched following impound. When police informed defendant that they would be seeking forfeiture of the seized money because it was obtained through the illegal sale of narcotics, defendant asserted the money constituted his winnings in the lottery.

Concurrent with the traffic stop of defendant, a phone call was placed from one of defendant's cell phones to the land phone line at 1953 Valley Street, which lasted 31 seconds. Two wireless phones for this line were maintained in the residence. At trial, Laketia Johnson, defendant's 29-year old sister, asserted she answered the phone and spoke with defendant who reported being stopped by police and requested that she locate and bring to him receipts proving he had paid any outstanding tickets. McMillan, although not speaking directly with defendant on the telephone, asserts she overheard this phone conversation. Laketia testified that she located the receipts and left, on foot, to where defendant had reported being stopped by police, but was unable to find him at that location to turn over the documentation. In contrast, defendant's 15-year-old half-sister, Seaniece, testified that she answered defendant's call at the residence and was instructed, by defendant, to "get the stuff out of the house." Seaniece asserted she did not

understand defendant's request and he directed her to find the "stuff" in a dresser. Seaniece found a white plastic shopping bag in a dresser in Golden's bedroom. Not knowing how to dispose of the bag, Seaniece stated she gave the bag to Laketia who, in turn, gave the bag to Precious. Precious took the bag out through the front door of the residence and left it in a wooded or overgrown area across the street. Although, at trial, Seaniece denied any knowledge regarding the contents of the bag, police officers testified that Seaniece initially admitted having looked inside the bag and suspected the contents to be cocaine. Seaniece also testified that McMillan was not present in the home when defendant phoned, which was supported by testimony from police observing the home that McMillan's vehicle left the residence before defendant drove away in the blue SUV and did not return.

Seaniece asserted that a short time later, Precious retrieved the bag from its outside location across the street and brought it back into the residence. Seaniece acknowledged that she put the bag in a larger black plastic trash bag that she placed on the ground outside at the back of the home. Detective Patrick Herremans, who was maintaining visual surveillance of the home during this time, confirmed seeing Precious and Seaniece leave the home, with Precious depositing the bag across the street. Herremans also indicated that he observed the girls retrieve and enter the residence with the bag a short time later. When Golden arrived home early from work she reportedly asked Seaniece, "Where did you put it?" Seaniece retrieved the bag and gave it to Golden. At Golden's request, Seaniece prepared a diaper bag for the minor children. Golden, Seaniece and the minor children then left the residence and drove to an uncle's home.

After stopping defendant and finding substantial amounts of cash on his person and in his vehicle, police sought a search warrant for Golden's residence. After a district judge signed the warrant, which included any vehicles found on the premises, Lewkowski contacted Herremans to maintain surveillance of the home and not permit any vehicles to leave. Police observed Golden leave the residence with the children but were unable to maintain surveillance of her vehicle. However, a short time later, Golden returned to the residence with Seaniece and the minor children, but left again, unaccompanied, before the police arrived with a search warrant for the premises. After Golden returned to the home and left the second time, Lewkowski instructed Herremans to stop her vehicle. Herremans was able to follow Golden's vehicle and was assisted by Detective Andy Rush of WMET who followed and observed Golden park her vehicle and enter another residence for a brief period. Golden was then observed to walk across the street to a gas station where she was detained by Muskegon police officer Marlin Dunmire. Dunmire handcuffed Golden and retrieved her vehicle keys from her purse. Dunmire searched Golden's vehicle and located suspected cocaine and marijuana wrapped in a commercial outer wrapper for diapers within a diaper bag inside the car. Subsequently, the substance within the diaper bag was confirmed as cocaine and consisted of 208 grams of compressed powder cocaine and 113 grams of crack cocaine.

Concurrent with Golden's arrest, police executed the search warrant at 1953 Valley Road. Entry into the residence was described as "dynamic" but not forced as a female occupant of the home opened the door upon identification by police. Inside the home, police separately interviewed Seaniece, Laketia and Sharonda. While searching the interior of the home, police located in a bedroom a bag used to wrap diapers, which matched the wrapper that contained the cocaine found in the diaper bag in Golden's vehicle.

II. MRE 404(b)

Defendant first challenges the trial court's failure to suppress the use of MRE 404(b) evidence of unrelated bad acts, asserting the evidence was used to improperly impugn defendant's character and was more prejudicial than probative. A trial court's evidentiary decisions are reviewed for an abuse of discretion. *People v Manser*, 250 Mich App 21, 31; 645 NW2d 65 (2002).

MRE 404(b)(1) provides:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

For prior acts to be admissible under MRE 404(b)(1), three factors must be present: (1) the proffered evidence must be for a proper purpose, (2) the evidence must be relevant under MRE 402, and (3) the probative value of the evidence must not be substantially outweighed by its potential for unfair prejudice. *People v Knox*, 469 Mich 502, 509; 674 NW2d 366 (2004), citing *People v VanderVliet*, 444 Mich 52, 74-75; 508 NW2d 114 (1993). Notably, MRE 404(b) is considered a rule of inclusion. *People v Pesquera*, 244 Mich App 305, 317; 625 NW2d 407 (2001). Relevant other acts evidence is not violative of MRE 404(b) unless the evidence is offered solely to demonstrate an individual's criminal propensity and to establish that the defendant acted in conformity therewith. *People v Katt*, 248 Mich App 282, 304-305; 639 NW2d 815 (2001).

Defendant challenges the admissibility of testimony by five police officers who participated in a traffic stop involving defendant and others in Nevada, near Las Vegas, at 5:00 a.m. on February 12, 2004. Police stopped a Michigan rental vehicle driven by Shakira Bradford for speeding. Three male passengers were in the vehicle, including defendant. When police interviewed the passengers, defendant initially provided police with a false name. Following the receipt of written consent by Bradford as the driver to search the vehicle, police found \$33,500 in cash wrapped in a plastic grocery bag within a nylon bag in the vehicle. When the passengers were questioned regarding the substantial sum of money, Bradford and a male passenger, Henry Savage, asserted ownership. When it became evident that police intended to seize the money, defendant properly identified himself and claimed that the bulk of the monies were his and had been won in the lottery. Defendant was able to produce lottery receipts, which confirmed his winnings of \$20,000 on February 6, 2004.² A search of the vehicle did not reveal any drugs or drug paraphernalia. A police dog was used to search the vehicle and although the dog did not react to the empty vehicle, it did signal for the presence of drugs when the seized money was present in the car. Ultimately, it was determined that there was insufficient evidence to support a

² A lottery official testified at trial that these monies constituted defendant's only recorded lottery win in Michigan.

forfeiture of the money and it was returned to defendant and his companions, through an attorney, on July 29, 2004.

Defendant also challenges the testimony of six local police officers regarding various traffic stops executed involving plaintiff and substantial sums of money. Specifically:

a. Officer Steve Stout stopped defendant for a traffic violation of March 10, 1997. Defendant did not have a valid license. Although defendant had \$400 in cash on his person, he reported he was unemployed.

b. On October 9, 1997, police officer Darlene Orterry, assisted by Shawn McBride, arrested defendant. Defendant's vehicle was stopped in the middle of the road and was surrounded by a number of people. When Orterry approached, the individuals surrounding the vehicle ran and defendant entered the vehicle and drove away. After pulling defendant's vehicle over, defendant ran away and was pursued on foot by Orterry. While in pursuit Orterry observed defendant take off and throw away his outer jacket. After subduing and arresting defendant, police found \$963 in cash, which defendant claimed belonged to his aunt. A small digital scale was found with his discarded jacket along with indicia of marijuana discovered in a jacket pocket. Police Sergeant Thomas Fine testified that the evidence procured from defendant's arrest by Orterry included a "pocket shake," which revealed crack cocaine residue in defendant's jacket pocket.

c. Police Officer Clay Orrison arrested defendant on July 22, 2004, for outstanding warrants. While no drugs were present, defendant had \$4281 in cash on his person. Notably, defendant had this amount of cash on his person before the return of his lottery winnings by Nevada police.

d. Detective Lewkowski recounted the arrest of defendant on June 9, 1993, for driving a vehicle owned by another individual while not having a valid driver's license. A search of defendant revealed \$342 in cash on his person and an additional \$2290 in cash found within a shoe in the trunk of the vehicle. Defendant claimed the money found on his person was earned by babysitting.

Defendant contends the above testimony was improperly admitted by the trial court, asserting it was not relevant to the current charges, was more prejudicial than probative and was improperly used to demonstrate his propensity to commit the charged offenses. Contrary to defendant's assertion, "evidence of similar misconduct is logically relevant to show that the charged act occurred where the uncharged misconduct and the charged offense are sufficiently similar to support an inference that they are manifestations of a common plan, scheme, or system." *People v Sabin (After Remand)*, 463 Mich 43, 63; 614 NW2d 888 (2000). "To establish the existence of a common design or plan, the common features must indicate the existence of a plan rather than a series of similar spontaneous acts, but the plan thus revealed need not be distinctive or unusual . . . [I]t need only exist to support the inference that the defendant employed that plan in committing the charged offense." *Id.* at 65-66 (citation omitted). In addition, to be admissible, an impermissibly high level of similarity is not required to exist between the proffered other acts evidence and the acts that are charged as long as the evidence is probative of something beyond

or other than the defendant's character or propensity to commit the charged offense. *Knox, supra* at 511.

In this instance, the prosecution used these other acts to demonstrate defendant's "scheme, plan or system" in having large sums of cash on his person, despite the absence of any explicable source of legitimate employment or income, for the sale or trafficking of controlled substances. Further, the evidence demonstrated defendant's "plan and system" to disavow ownership of monies seized whenever confronted by police or to attribute possession of large sums to his one-time success in the lottery. The frequency at which these incidents occurred was probative of "the existence of a plan rather than a series of similar spontaneous acts." *Sabin, supra* at 65-66. Evidence is deemed relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401. The probative value of the prior bad acts evidence was not substantially outweighed by the danger of unfair prejudice because the contested evidence was directly relevant to defendant's plan and method of operation and rebutted defendant's implication that his possession of substantial sums of money whenever arrested or detained by police were merely accidental or serendipitous.

As a result, the trial court did not abuse its discretion in the admission of other bad acts evidence as it was offered for a proper purpose, was relevant to an issue of consequence at trial and was not substantially outweighed by the danger of unfair prejudice. *People v Crear*, 242 Mich App 158, 169-170; 618 NW2d 91 (2000). Importantly, the trial court also instructed the jury to only consider the other bad acts evidence for the limited purpose of determining that defendant "had knowledge" regarding the presence of cocaine, "exercised control over the cocaine," and had "a plan, system, or characteristic scheme that he has used before." The trial court specifically instructed the jury that the other acts evidence could not be used for any other purpose and that the jury must not convict defendant because it believed him guilty of other or prior bad conduct. Because jurors are presumed to follow their instructions, *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998), we must assume that the jurors only considered this evidence for a proper purpose. In addition, instructions, such as those provided by the trial court, generally serve to protect a defendant's right to a fair trial. *People v Magyar*, 250 Mich App 408, 416; 648 NW2d 215 (2002).

Defendant also challenges the admissibility of testimony by convicted drug dealer, Toriano Green. Green is currently serving a sentence of 4 to 20 years' imprisonment with the Michigan Department of Corrections following his March 18, 2005, arrest in Romulus, Michigan for possession of 3461 grams of cocaine with intent to deliver. Green testified that he had several contacts in both Michigan and Las Vegas, where he delivered significant amounts of cocaine, ranging from 1.5 to 3 kilos, to defendant and defendant's cousin, Marquan Wilson. Reportedly, Green would obtain kilos of cocaine in Los Angeles and deliver the drugs to defendant and/or Wilson for repackaging and sale in Michigan. Green indicated that he saw co-defendant Golden and defendant's current girlfriend, Bradford, when some of these exchanges were executed. Green indicated that defendant and/or Wilson paid him thousands of dollars in cash when the drugs were delivered.

Defendant contends Green's testimony was inadmissible because it was not relevant to the current charges, constituted improper character evidence and unduly prejudiced the jury. However, as with the testimony regarding the prior bad acts of defendant attested to by the

various police officers, Green's testimony served to explain defendant's plan, intent and preparation in trafficking controlled substances and motive for maintaining substantial amounts of cash on his person. The proffered evidence was relevant to defendant's motive and the danger of unfair prejudice was sufficiently addressed by the trial court's instructions to the jury regarding the limited use of this testimony.

Finally, with regard to his MRE 404(b) challenges, defendant contends testimony by his half-sister Seaniece that she had observed defendant at another residential location in possession of cocaine seven to eight years before the current charges, should have been deemed inadmissible by the trial court. Specifically, defendant asserts the evidence was extremely prejudicial and of no probative value. Although we concur that this evidence is marginal in its probative value, we also consider that "a trial court's decision on a close evidentiary question ordinarily cannot be an abuse of discretion." *People v Hine*, 467 Mich 242, 250; 650 NW2d 659 (2002). We note that defendant was charged with inducing this same minor to commit a felony. As such, defendant's willingness to expose his half-sister to the presence of drugs or his involvement in drug trafficking demonstrates an absence of mistake or accident and is relevant to the crime charged. "Evidence is unfairly prejudicial when there exists a danger that marginally probative evidence will be given undue or preemptive weight by the jury." *People v Crawford*, 458 Mich 376, 398; 582 NW2d 785 (1998). While the evidence was of limited relevance, the trial court's instruction directed the jury not to consider the evidence to demonstrate defendant's bad or criminal nature or that he acted in conformity with his previous conduct, and sufficiently protected defendant's right to a fair trial. *Magyar, supra* at 416.

III. Vehicle Search

Defendant next contends that the evidence seized from the vehicle he was driving at the time of his arrest should have been suppressed because a search of the rear storage area was improper. Specifically, defendant asserts that the search of the area where the money was located did not constitute part of the passenger compartment of the vehicle. Notably, defendant does not challenge the constitutionality of the initial traffic stop, as police may stop, question, and detain a person who violates traffic laws while driving. *People v Lewis*, 251 Mich App 58, 70; 649 NW2d 792 (2002). Rather, it is merely the scope of the search conducted by police, which defendant challenges. When evaluating a motion to suppress, this Court reviews the trial court's factual findings for clear error. *People v VanTubbergen*, 249 Mich App 354, 359-360; 642 NW2d 368 (2002). "To the extent that a trial court's ruling on a motion to suppress involves an interpretation of the law or the application of a constitutional standard to uncontested facts, our review is de novo." *People v Attebury*, 463 Mich 662, 668; 624 NW2d 912 (2001).

We find that the search of the vehicle following defendant's arrest was constitutional. This Court has previously determined that a defendant does not have standing to challenge the search of a vehicle if he does not assert either a proprietary or possessory interest in it. *People v Armendarez*, 188 Mich App 61, 71; 468 NW2d 893 (1991). In this instance, defendant was not a party to the rental agreement for the vehicle. His girlfriend, Bradford, had rented the automobile and had permitted defendant to use it, despite his lack of a valid operator's license. Because defendant was not a party to the rental agreement, he was not an authorized user of the vehicle and, therefore, we find that defendant lacks standing to contest the search of the vehicle.

Even if defendant had standing, the search was constitutional in accordance with the search being incident to the lawful arrest exception to the warrant requirement. *People v Eaton*, 241 Mich App 459, 463; 617 NW2d 363 (2000) (citation omitted). When police conduct a search incident to an arrest, they may search not only the defendant's person but also the area within his immediate control. *Id.* This includes searching the passenger compartment of the automobile that was occupied by defendant as a contemporaneous incident of his arrest, *id.*, and encompasses the examination of the contents of any containers located within the passenger compartment of the vehicle. *New York v Belton*, 453 US 454, 460; 101 S Ct 2860; 69 L Ed 2d 768 (1981). As noted by the trial court, the vehicle being driven by defendant was an SUV, "which did not have a separate enclosed trunk." Specifically, the trial court determined that "[t]he SUV had two front bucket seats, a rear bench seat, and then a space behind the rear bench seat which was accessible to the driver and passengers." Because the rear compartment was open and accessible without leaving the vehicle, the trial court determined that the rear area constituted "part of the passenger compartment." See *United States v Pino*, 855 F2d 357, 364 (CA 6, 1988) (citation omitted), defining the passenger compartment of a vehicle as "all space reachable without exiting the vehicle."

In addition, the trial court validated the search of the vehicle under the inventory exception to the warrant requirement. The trial court noted, "[t]he Muskegon Police Department has a written impound policy which allows a vehicle to be impounded under this charge, and that policy provides that an inventory search of the impounded vehicle is to be done. The vehicle was stopped in a traffic lane, so Officer Parker impounded the vehicle and conducted an inventory search of the passenger compartment." The inventory exception requires that impoundment of a vehicle and search be conducted in accordance with established departmental policy. *People v Green*, 260 Mich App 392, 410-411; 677 NW2d 363 (2004), rev'd on other grounds *People v Anstey*, 476 Mich 436, 447 n 9 (2006). In this instance, defendant was the sole occupant of the vehicle and had been arrested for failing to have a valid driver's license. The vehicle was stopped in the middle of the road and blocked traffic. Based on the trial court's determination that impoundment of the vehicle was consistent with police practice and policy, the items recovered from the search conducted of the vehicle need not be suppressed.

IV. Search Warrant

Defendant next challenges the validity of the search warrant executed for 1953 Valley Road, asserting the information used to obtain the warrant was "stale" and that the affidavit used to secure the warrant did not provide sufficient facts to find that the information supplied was reliable. Defendant further contends that police could not invoke the good faith exception to the exclusionary rule. "Appellate review of a magistrate's probable cause determination requires this Court to ask whether a reasonably cautious person could have concluded that there was a substantial basis for the finding of probable cause. Affording due deference to the magistrate's conclusion, this Court must simply ensure that there is a fair probability that contraband or evidence of a crime will be found in a particular place." *People v Sobczak-Obetts*, 253 Mich App 97, 107-108; 654 NW2d 337 (2002) (internal quotation marks and citations omitted).

However, before addressing defendant's contentions regarding the validity of the search warrant, we must first address the prosecution's claim that defendant lacks standing to challenge the search of Golden's residence. The right to be free from unreasonable searches and seizures is personal and may not be invoked by third parties. *People v Zahn*, 234 Mich App 438, 446; 594

NW2d 120 (1999). For an individual to assert standing to challenge a search, there must exist a legitimate expectation of privacy in the place or location searched, which society recognizes as reasonable. *People v Powell*, 235 Mich App 557, 560; 599 NW2d 499 (1999).

In this matter, the residence searched belonged to Golden, not defendant. Although defendant had continuing contact with Golden he did not reside at her home. Only defendant's half-sister Seaniece implied that defendant sporadically spent the night at that location. However, two other adult witnesses, including one individual who temporarily resided at the home, adamantly denied that defendant either spent the night or was a resident at that location. Rather, defendant was more accurately characterized as an occasional visitor who came to the home to see his children. In addition, defendant was not even at the home when the search warrant was executed. The mere fact that defendant occasionally had access to the home to visit his children, or to maintain illegal drugs, without more, fails to confer on defendant a legitimate expectation of privacy in the residence. Because defendant, at best, was a mere visitor at the home, he did not have standing to challenge the search and this Court need not address defendant's assertions regarding staleness and the lack of probable cause for issuance of the search warrant.

V. MRE 801(d)(1)

Next, defendant takes issue with the trial court's failure to sustain his objection to testimony by Lewkowski recounting the preliminary examination testimony by another witness, Seaniece Johnson, which demonstrated consistency with her trial testimony. Defendant asserts the elicitation of such testimony constituted improper vouching and bolstering of Seaniece's credibility. In addition, defendant contends the trial court's provision of an instruction to the jury, which applied to impeachment using inconsistent testimony, was in error. In response, the prosecution contends the trial court properly permitted the rehabilitation of Seaniece Johnson in accordance with MRE 801(d)(1)(A) and (B) following assertions by defendant's counsel during his opening statement and cross-examination that Seaniece was biased and lacked credibility based on an improper motive to testify. We review the trial court's decision regarding the admission of evidence for abuse of discretion. *People v Aldrich*, 246 Mich App 101, 113; 631 NW2d 67 (2001).

MRE 801(d)(1)(B) provides that a statement does not constitute hearsay if "[t]he declarant testified at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is . . . consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive." To establish admissibility under MRE 801(d)(1)(B), four elements must be demonstrated:

- (1) the declarant must testify at trial or hearing and be subject to cross-examination;
- (2) there must exist an express or implied charge of recent fabrication or improper influence or motive of the declarant's testimony;
- (3) the proponent must provide or offer a prior consistent statement that is consistent with the declarant's challenged in-court testimony; and,
- (4) the prior consistent statement must have occurred before the time that the supposed motive to falsify arose. [*People v Jones*, 240 Mich App 704, 707; 613 NW2d 411 (2000) (citation omitted).]

Prior consistent statements are admissible through a third party if the requirements of MRE 801(d)(1)(B) are satisfied.

The first and third elements required to establish admissibility of consistent statements under MRE 801(d)(1)(B) are not in dispute. The first element was met because Seaniece was available for cross-examination at both the preliminary examination and at trial. The third element is readily acknowledged by defendant to have been met because his challenge regarding the admissibility of the testimony by Lewkowski was due to its consistency with Seaniece's preliminary examination testimony. The second element is met because defendant's counsel, during opening statements and cross-examination of Seaniece, implied that her testimony was false or fabricated. For example, when cross examining Seaniece regarding Precious' transport of the drugs to a location outside the residence, defendant's counsel inquires, "Are you making this up as you go?" and suggests that any uncertainty by Seaniece in responding to questions was "because it didn't really happen." In addition, defendant asserted that Seaniece's prosecution for her role in handling the alleged narcotics, subsequent entry into a plea agreement and promises for leniency in exchange for her testimony provided a motive to lie.

The difficulty arises with the final element regarding the timing of the prior consistent statements. "While a consistent statement that predates the motive [to fabricate] is a square rebuttal of the charge that the testimony was contrived, consistent statements made after the motive to fabricate arose provide very little support against a charge of fabrication." *People v Rodriguez*, 216 Mich App 329, 331; 549 NW2d 359 (1996). In this instance, Seaniece was already charged at the time of the preliminary examination with "possession of 50 grams or more, but less than 450 grams of cocaine." As such, the motivation alleged by defendant for Seaniece to fabricate her testimony had already been established at the time of the preliminary examination. Because consistent statements made after the motive to fabricate arose are construed as inadmissible hearsay, the trial court abused its discretion in admitting this testimony. *Id.* at 332.

However, even though we agree with defendant that an error occurred, defendant cannot establish that the admission of the officer's testimony, recounting Seaniece's preliminary examination testimony, affected the outcome of the trial and, therefore, its admission was harmless. *Rodriguez, supra* at 332. In this instance, the prosecutor did not ask Lewkowski to comment on the credibility or veracity of Seaniece and defendant does not assert that Lewkowski's recounting of the testimony comprised an inaccurate restatement of the preliminary examination testimony. Rather, defendant contends the testimony constituted improper bolstering of Seaniece's credibility and was presented to call into question the testimony of other witnesses regarding the subject or content of defendant's phone call to the residence when stopped by police. In questioning Lewkowski the prosecutor demonstrated that the proffered alternative explanation for defendant's phone call to secure documentation showing his payment of outstanding tickets had not been raised until trial. In addition, because Seaniece testified, the jury was able to evaluate her testimony and credibility firsthand. As a result, the statements did not reveal any critical facts that the jury had not already heard through the direct testimony of Seaniece and were merely cumulative. Given these circumstances, any prejudice caused by the admission of the challenged testimony was minimal and did not affect the trial outcome. *People v McCray*, 245 Mich App 631, 642-643; 630 NW2d 633 (2001).

Further, there existed other evidence of defendant's guilt and complicity in the trafficking of illegal substances. Evidence was presented by other officers who observed Seaniece and Precious engaged in behaviors, which coincided with Seaniece's testimony regarding how events transpired at the residence. Defendant was stopped and substantial sums of money were recovered, the origin of which cannot be explained given defendant's lack of employment or demonstrable economic resources. Defendant had access to Golden's residence and Golden was stopped while in possession of a substantial amount of cocaine. Given the existence of this other evidence, defendant is unable to demonstrate that it is more probable than not that the preserved error was outcome determinative. *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999).

Defendant also contends the trial court's provision of the following instruction to the jury was in error:

If you believe that a witness previously made a statement inconsistent with his or her testimony at this trial, the only purpose for which that earlier statement can be considered by you is in deciding whether the witness testified truthfully in court. The earlier statement is not evidence that what the witness said earlier is true.

Defendant argues that the instruction was not proper because statements elicited by Lewkowski regarding Seaniece's preliminary examination testimony did not demonstrate any inconsistencies. We would note that defendant fails to provide any legal authority in support of this contention. This Court need not search for authority to support or reject defendant's argument. *People v Kevorkian*, 248 Mich App 373, 389; 639 NW2d 291 (2001). In addition, the instruction is not specific or limited to Lewkowski's testimony. The instruction only refers to "a witness." A review of the record demonstrates that at trial Seaniece denied looking in the bag, which she and Precious allegedly removed and then returned to the residence. However, police testimony indicated that Seaniece acknowledged, when initially questioned, that she had looked in the bag and believed the contents were cocaine. As such, there was a sufficient basis for the trial court's provision of this instruction to the jury.

VI. Cumulative Error

Defendant also asserts that defendant's conviction should be reversed on the basis of cumulative error. Specifically, defendant contends that the cumulative effect of multiple errors resulted in his denial of a fair trial. "This Court reviews this issue to determine whether the combination of alleged errors denied defendant a fair trial." *People v Knapp*, 244 Mich App 361, 387; 624 NW2d 227 (2001).

When determining whether a criminal conviction should be reversed because of cumulative errors, "only actual errors are aggregated to determine their cumulative effect." *People v LeBlanc*, 465 Mich 575, 592 n 12; 640 NW2d 246 (2002) (citation omitted). To substantiate reversal on the basis of cumulative error, the errors at issue must be of consequence. *People v Cooper*, 236 Mich App 643, 659-660; 601 NW2d 409 (1999). Stated another way, the effect of the errors must have resulted in serious prejudice to defendant in order for us to find that defendant was denied a fair trial. *People v Griffin*, 235 Mich App 27, 46; 597 NW2d 176 (1999), overruled in part on other grounds *People v Wright*, 477 Mich 1121 (2007).

We conclude that defendant's assertion that cumulative errors deprived him of a fair trial is lacking merit. Because only one harmless error was determined to have occurred in reference to defendant's asserted issues on appeal, "a cumulative effect of errors is incapable of being found." *People v Mayhew*, 236 Mich App 112, 128; 600 NW2d 370 (1999).

VII. *Blakely v Washington*

Finally, citing *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004), defendant objects to the use of the mandatory Michigan Sentencing Guidelines in order to preserve this issue for potential future appeal. As acknowledged by defendant, this Court must follow the decisions concluding that *Blakely* is inapplicable to sentencing imposed in Michigan. See *People v Drohan*, 475 Mich 140, 143, 164; 715 NW2d 778 (2006). However, to the extent that defendant only seeks to ensure that the issue is preserved for future review, we consider the issue preserved for appellate review even though it is not capable of further review by this Court.

Affirmed.

/s/ William C. Whitbeck
/s/ Michael J. Talbot
/s/ Karen M. Fort Hood