# STATE OF MICHIGAN

# COURT OF APPEALS

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| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>September 20, 2002 |
| V | No. 234261<br>Wayne Circuit Court |
| ARMON SANDERS,<br><br>Defendant-Appellant. | LC No. 00-007786 |

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Before: Smolenski, P.J., and Talbot and Wilder, JJ.

PER CURIAM.

Defendant Armon Sanders appeals by right his convictions (following a bench trial) of possession with intent to deliver marijuana, in violation of MCL 333.7401(2)(c), and possession with intent to deliver Tylenol 3, a controlled substance, in violation of MCL 333.7401(2)(b). We affirm.

## I. Facts and Proceedings

Defendant's convictions arise out of an incident on June 17, 2000, at the house located at 9206 Hayes in Detroit.[1] Sergeant Andrew White of the Detroit Police Department had obtained a search warrant for the residence after observing alleged drug transactions on June 14, 15, and 16, 2000. On June 17, 2000, Detroit Police Officer Jerod Blanding set up pre-raid surveillance across the street from 9206 Hayes. He testified that over a twenty minute period, he saw defendant and co-defendants Anthony Jones and Deuvoy Carroll conducting suspected narcotics transactions. Specifically, he testified that defendant, who was inside the house, came to the door, had a conversation with a woman at the door, and then received currency in exchange for some pills that he removed from a small black box. Defendant came to the door a second time and gave a man marijuana from the black box and received currency in return. Jones and Carroll conducted similar transactions, although neither of them dispensed drugs from a black box. Jones exchanged a zip lock bag of suspected marijuana for currency, and Carroll took pills from

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[1] At the time, this house was a two-flat residence with a staircase leading to the upper flat immediately inside the door. Adjacent to the staircase was a security grate leading to the entrance of the lower flat.

a bag and exchanged them for currency. Officer Blanding relayed this information to the raid crew, and the raid crew arrived and apprehended the last buyer on the front porch of the home.[2]

Officer Darron Bell, who was on the ram position of the raid crew entry team, testified that he observed Jones sitting in the front room of the house when the crew entered. Bell placed Jones under arrest and discovered seven medium bags of marijuana when he searched Jones. Bell also observed defendant "running towards the rear of the house" when the team entered.[3] At that time, Bell could not tell if defendant had anything in his hands. After the location was secure, Bell saw Carroll in the residence as well.

Officer John Dembinski, also part of the raid crew, was the first officer to actually enter the premises. He observed Carroll on the stairs inside the front door and then saw defendant and Jones coming into the front room from the dining room.[4] He opened the security grate, "froze" Jones, turned him over to Officer Bell, and followed defendant to the rear bedroom. Once in the bedroom, Officer Dembinski saw defendant throw a small black box onto the dresser. The box, an Elizabeth Taylor White Diamonds perfume box, contained two bags of marijuana, a brown vial holding 44 tablets of Tylenol 3, 84 tablets of valium, another brown vial containing 15 tablets of valium, and a brown vial containing 40 tablets of acetaminophen. Officer Dembinski then arrested defendant.

Sergeant Andrew White was in charge of the raid crew at 9206 Hayes. He ordered that the arrestees be transported to 1300 Beaubien and testified that, at that location, $452 was recovered from Jones and $25 was recovered from defendant. He also submitted evidence to the Chemical Analysis Unit, and, at trial, counsel for all three defendants stipulated to the contents of the laboratory analysis reports. The reports showed that the White Diamonds box contained substances such as marijuana and pills containing codeine, phentermine, alprazolam, and diazepam. Analysis of the other evidence collected at the scene showed that the clear packets retrieved from Jones did contain marijuana and the pills found in a plastic bag contained codeine.

Defendant testified in his own defense and told a different version of these events. He stated that he lives with his mother at 9206 Hayes on weekends and that on the day in question, he had been in the living room watching television for about 30 minutes before the police arrived. He said that he did not go to the door or open the door at any time while he was there, and neither did his uncle, co-defendant Anthony Jones. Defendant heard the police yell "Police" through the outside door, and when they came in, they "froze" him right there in the living room. He denied moving from the living room and said he never had the White Diamonds perfume box in his possession that day. He said he did not leave the living room until the officers told them to

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[2] Count 3 of the Information in this case charged the buyer, Clarence Harris, with possession of the controlled substance codeine, in violation of MCL 333.7403(2)(b). Officer Steven Sosa arrested Harris and found that he was carrying Tylenol 3 tablets and three other tablets "that were dangerous drugs." He was not tried with defendant, Jones, and Carroll, however.

[3] At trial, Officer Bell identified the man he saw on June 17th as defendant, the man in the light green suit sitting next to Mr. Jones.

[4] Officer Dembinski also identified each defendant in court, giving descriptions similar to those given by Officer Bell.

go upstairs where the officers handcuffed them. Defendant also testified that the box was bigger than the officers said it was, that it was actually 10 or 12 inches wide and seven or eight inches high and could not be held in one hand, as Officer Blanding said it had been. Furthermore, he stated that Hayes is a two lane street in each direction, with no parking on the side of the street opposite his mother's home.

Jones testified that in the early afternoon of June 17, 2000, he was watching television in the dining room and defendant was watching television in the living room when the police arrived. He said he heard "a whole lot of running upstairs" and thought the upstairs resident was getting evicted. The police officer who came to the door told Jones that he had a search warrant, and Jones told him that the house was a two-family flat, but the officer said that the warrant was for the whole house. Jones asked to see the warrant, but the officer did not comply with his request. Jones said he arrived at his sister's house at 9:30 p.m. on June 16 and stayed there because there had been previous break-ins, including at Carroll's flat, and his sister did not want to leave the house. Jones said he never left the house and did not sell any drugs that day. He claimed that the $400 was his sister's rent money that the police found in "the room," not on him.

Carroll, who lived in the upstairs flat, testified that he had just arrived home after visiting a senior citizen down the street for about an hour when the police arrived. He was on his way upstairs when he heard a bump on the door. He turned and saw a light flashing in his eye and heard the police identify themselves. Carroll testified that he did not sell any pills or marijuana.

The court rendered its verdict immediately at the end of the trial. The court found that there were drugs being sold from 9206 Hayes and that which individual had physical possession of the drugs was not even relevant because even if one person had possession, and the other individuals were involved in trafficking, then under an aiding and abetting theory, the defendants were assisting one another. The court also found that there was trafficking going on, that all three defendants were involved, and that they aided and abetted each other. Each defendant was found guilty of possession with intent to deliver marijuana, possession with intent to deliver Tylenol, and possession of codeine.[5] On December 20, 2000, the court sentenced defendant to three years of probation, the first six months of which were to be served in the Wayne County Jail.

In this appeal, defendant claims that the evidence was not sufficient to support his convictions.

## II. Standard of Review

To determine whether the evidence is sufficient to support defendant's convictions, this court reviews the evidence de novo, *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999), to decide "whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt." *People v Hardiman*, 466 Mich 417, 421; 646 NW2d 158 (2002). The

[5] These three defendants were not charged with possession of codeine. The Judgment of Sentence shows that defendant was convicted of counts 1 and 2 only.

evidence is viewed in a light most favorable to the prosecution. *Id.* "It is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded to those inferences." *Id.* at 428.

## III. Analysis

The principal element of the offense that defendant challenges is his identification as the person involved in the drug sales. The prosecution must prove beyond a reasonable doubt the identity of the defendant as the perpetrator of a charged offense. *People v Kern*, 6 Mich App 406, 409-410; 149 NW2d 216 (1967). Either direct testimony or circumstantial evidence can establish identity. *Id.* Here, defendant focuses exclusively on the testimony of Officer Blanding and says that because Officer Blanding did not specifically identify him as the "Mr. Sanders" he referred to in his testimony or describe what that individual looked like on June 17, 2000, there was insufficient evidence to show defendant's involvement in the transaction.[6]

Defendant, however, mischaracterizes the testimony. Officer Blanding's responses to various questions make clear that defendant is the "Mr. Sanders" to whom Officer Blanding was referring. For example, defendant's attorney asked, "You indicated that you saw my client, who is Mr. Sanders, come to the door, the outer door that would be that wooden door; is that what you're saying?" Officer Blanding responded, "Correct." Later, defense counsel asked, "Were you able to determine if these alleged pills [that you saw being distributed] were in a, contained in anything; or were they loose?" Officer Blanding answered, "For your client, they were in a brown vial." It is reasonable to infer from these exchanges that the man Officer Blanding saw and called "Mr. Sanders" was defendant.

Moreover, Officer Dembinski specifically identified defendant as the same person he saw throw the black box in the bedroom. This testimony is significant because "Mr. Sanders" is the only defendant Officer Blanding said dispensed drugs from a black box. Therefore, it is reasonable to infer that defendant was the man Officer Blanding saw selling drugs from the black box. Accordingly, the evidence regarding defendant's identity is sufficient.

Defendant also addresses the trial court's findings, stating that the trial court did not address the alleged transactions involving defendant because the court was having difficulty assessing the identification evidence and that the court never found that defendant delivered any codeine. Defendant's argument in this regard is not clear. To the extent that he challenges the trial court's findings under MCR 6.403, his challenge lacks merit. That rule states:

> When trial by jury has been waived, the court with jurisdiction must proceed with the trial. The court must find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment. The court must state its

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[6] We note that defendant has not cited any authority regarding how the supposed lack of identification affects his case, but has merely summarized testimony and stated that the evidence was not sufficient. "A party may not leave it to this Court to search for authority to sustain or reject its position." *Sherman v Sea Ray Boats,* ___ Mich App ___; ___ NW2d ___ (Docket No. 227450, decided 4/26/02), slip op at 7.

findings and conclusions on the record or in a written opinion made a part of the record.

The trial court's "factual findings are sufficient as long as it appears that the trial court was aware of the issues and correctly applied the law." *People v Kemp*, 202 Mich App 318, 322; 508 NW2d 184 (1993). The court does not have to make specific findings regarding each element of the crime as long as the record shows that the court correctly applied the law to its findings of fact. *People v Wardlaw,* 190 Mich App 318, 321; 475 NW2d 387 (1991).

Additionally, defendant disputes the applicability of the aiding and abetting theory the trial court referenced. The court stated, "Now, when [the police] came in, being in actual physical possession by all three people is not really the issue. And it's not even relevant. . . . because under aiding and abetting their [sic] aiding and abetting, encouraging, and assisting each other." We find that the court's comments refer mainly to co-defendant Carroll since he was the only co-defendant who was not found actually possessing drugs. Defendant Sanders, however, had actual possession of both marijuana and pills containing codeine. The trial court clearly indicated that each defendant was involved in the trafficking that was going on. Additionally, the trial court referenced Officer Blanding's testimony that "he saw people come up to the house, were handed things, and they exchanged money, and then they left." In sum, although the trial court did not recite its findings defendant-by-defendant or address each piece of evidence, its comments show that it believed the testimony of the officers that established the elements of the crimes. Therefore, the trial court's findings were sufficient.

Affirmed.

/s/ Michael R. Smolenski
/s/ Michael J. Talbot
/s/ Kurtis T. Wilder