STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 19, 2014
v	No. 315714 Kent Circuit Court
ARNELL LAMONTE SCOTT, Defendant-Appellant.	LC No. 12-006783-FH

Before: M. J. KELLY, P.J., and SAWYER and HOEKSTRA, JJ.

PER CURIAM.

Defendant Arnell Lamonte Scott appeals by right his jury convictions of possession with intent to deliver a controlled substance less than 50 grams, MCL 333.7401(2)(a)(*iv*), and possession of marijuana, MCL 333.7403(2)(d). The trial court sentenced Scott as a habitual offender, see MCL 769.12 and MCL 333.7413, to serve 46 months to 40 years in prison for his possession with intent to deliver a controlled substance conviction and to time served for his possession of marijuana conviction. Because we conclude there were no errors warranting relief, we affirm.

In June 2012, two detectives conducted undercover surveillance of a residence in Grand Rapids. They saw Scott sitting in a car outside the residence and a confidential police informant approached Scott and purchased cocaine from him. After the sale, Scott drove away, but officers soon stopped him. The officers searched the car and found marijuana and more than 5.5 grams of crack cocaine hidden in a compartment.

Scott first argues that there was insufficient evidence to support his convictions. Specifically, he contends that there was insufficient evidence that he possessed the narcotics found in the car he was driving or that he had the intent to deliver the cocaine. This Court reviews a challenge to the sufficiency of the evidence by reviewing the "record evidence de novo in the light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt." *People v Roper*, 286 Mich App 77, 83; 777 NW2d 483 (2009).

In order to convict Scott of possessing the cocaine with the intent to deliver, the prosecution had to present evidence from which the jury could find—in relevant part—that Scott knowingly possessed the cocaine and did so with the intent to deliver it. *People v Wolfe*, 440 Mich 508, 516-517; 489 NW2d 748 (1992). Similarly, the prosecutor had to present evidence

that Scott knowingly possessed the marijuana at issue. See *People v McGhee*, 268 Mich App 600, 622-623; 709 NW2d 595 (2005) (stating that knowing possession is an element of every possession of narcotics offense). A prosecutor does not have to present evidence that the defendant had actual physical possession of the illegal drugs in order to establish possession; it is sufficient to present evidence that the defendant constructively possessed them. *Id.* at 622. Constructive possession "is the right to exercise control over the drug coupled with knowledge of its presence," and "exists when the totality of the circumstances indicates a sufficient nexus between the defendant and the controlled substance." *People v Cohen*, 294 Mich App 70, 76-77; 816 NW2d 474 (2011) (quotation marks and citation omitted).

In the present case, there was circumstantial evidence that Scott both knew about and exercised control over the drugs found in the car. There was testimony that Scott sold cocaine to an informant shortly before he was stopped. There was also evidence that officers found more than 5 grams of crack cocaine in the same car shortly after the informant made the purchase. From this evidence, a reasonable jury could conclude that Scott sold a portion of the cocaine hidden in the car to the informant—that is, a reasonable jury could infer that Scott both knew about and had control over the cocaine in the car. Scott also admitted to smoking marijuana in the car earlier that day and made statements that suggested he knew the types, amounts, and packaging of the drugs. Further, the evidence that the car did not belong to Scott did not preclude the jury from finding that he knowingly possessed the drugs. *McGhee*, 268 Mich App at 624. Viewing the evidence in the light most favorable to the prosecution, there was sufficient evidence from which a reasonable jury could find that Scott knowingly possessed the drugs at issue. *Roper*, 286 Mich App at 83.

This same evidence supports an inference that Scott possessed the cocaine with the intent to deliver it. A defendant's intent to deliver a controlled substance may be proved by circumstantial evidence, including the quantity of drugs, *People v Ray*, 191 Mich App 706, 708; 479 NW2d 1 (1991), the absence of paraphernalia for personal consumption, *Wolfe*, 440 Mich at 525, and the defendant's possession of other items that are consistent with drug dealing at the time of arrest, *People v Hardiman*, 466 Mich 417, 422 n 5; 646 NW2d 158 (2002).

Here, there was evidence that Scott possessed a substantial amount of cocaine that would not normally be indicative of personal use. He also did not have the paraphernalia normally associated with personal use. Moreover, the evidence showed that he had recently sold cocaine and possessed cash that was consistent with prior sales. Viewing this evidence in the light most favorable to the prosecution, the evidence was sufficient to support a finding that Scott possessed the cocaine with the intent to deliver. *Wolfe*, 440 Mich at 524-526.

Next, Scott argues the trial court erred when it allowed the prosecution to present evidence that he had previously been involved with drugs. Scott's lawyer objected to the admission of other acts evidence on the basis that it was more prejudicial than probative, but did not object on any other ground. An objection to evidence on one ground is not sufficient to preserve an objection on a different ground. *People v Asevedo*, 217 Mich App 393, 398; 551 NW2d 478 (1996). Therefore, we shall review the trial court's determination regarding the prejudicial effect of the evidence for an abuse of discretion, *People v Waclawski*, 286 Mich App 634, 669-670; 780 NW2d 321 (2009), but will review the remaining claims for plain error, *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

MRE 404(b)(1) generally prohibits the introduction of other acts evidence to prove that the defendant has bad character and acted in conformity with his or her character. Nevertheless, other acts evidence may be relevant and admissible for other purposes. See MRE 402; MRE 404(b)(1). Even when otherwise admissible for a proper purpose, other acts evidence may "be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . . ." MRE 403; see also *People v Sabin (After Remand)*, 463 Mich 43, 55-56; 614 NW2d 888 (2000).

In the present case, the prosecution introduced evidence that Scott sold cocaine to an undercover police officer in 2005 and admitted to possessing 9.71 grams of crack cocaine in 2008. The prosecution presented this evidence to show that Scott knowingly possessed the drugs and did so with the intent to deliver, which are proper purposes under MRE 404(b)(1). See *McGhee*, 268 Mich App at 610-614. Finally, although there was a danger that the jury might use this evidence for an improper propensity purpose, the danger did not substantially outweigh the significant probative value of the evidence. *Id.* at 614. The trial court did not abuse its discretion or commit plain error when it allowed this evidence.

Scott additionally argues that Detectives Chad Preston and John Butler should not have been qualified as expert witnesses on illegal drug sales and should not have been permitted to testify regarding Scott's knowledge and intent. He contends that these errors denied him his constitutional right to a fair trial. We shall review these unpreserved claims for plain error affecting Scott's substantial rights. *Carines*, 460 Mich at 763.

Before admitting expert testimony under MRE 702, trial courts must evaluate the proposed testimony and ensure that the testimony "will assist the trier of fact to understand a fact in issue", that the expert is qualified to offer the testimony, and that the expert's opinion "is based on reliable data, principles, and methodologies that are applied reliably to the facts of the case." *People v Kowalski*, 492 Mich 106, 120; 821 NW2d 14 (2012). Police officers may be qualified as expert witnesses on illegal drug paraphernalia and sales on the basis of their training and experience. *Ray*, 191 Mich App at 707-708; see also *People v Petri*, 279 Mich App 407, 416-417; 760 NW2d 882 (2008). Finally, this Court has held that the testimony from police officers regarding typical activity of individuals selling drugs aids a jury in determining a defendant's intent to deliver drugs because "[s]uch information [i]s not within the knowledge of a layman." *Ray*, 191 Mich App at 708.

Here, Preston testified that he had been assigned to his department's Vice Unit for over eight years, and that the Vice Unit's "number one priority or focus is narcotics." He had posed as a buyer of street-level drugs such as cocaine and marijuana approximately 20 times, had been involved with executing search warrants at hundreds of drug houses, and had intimate knowledge of local drug practices through his informants. Preston opined that the circumstances surrounding the drugs at issue—the amount and packaging—suggested that the drugs were intended for sale. He also testified that it would be unusual for a drug dealer to leave the quantity of cocaine found in the car unattended. Finally, he testified that Scott's possession of empty blunt wrappers suggested that he had recently used marijuana.

Detective Butler similarly testified that he had been assigned to his department's Vice Unit for almost 18 years. He had posed as a buyer of street-level drugs approximately 150 times, had been involved with executing search warrants at approximately 2,000 drug houses, routinely interviewed individuals arrested for possession with intent to deliver illegal drugs, and had monitored hundreds of hours of telephone calls made by inmates from jail. Butler testified that in a call Scott made from the jail, he stated that he had been caught with "a little smoke and a cutie," and that based on his training, knowledge, and experience, he knew that "smoke" is a slang term for marijuana and a "cutie" refers to a quarter of an ounce of cocaine. In the same telephone call, Scott advised someone to get the "firecrackers" out of his residence. Butler opined that the word "firecrackers" referred to either drugs or firearms.

The trial court did not plainly err when it failed to *sua sponte* preclude Preston and Butler from testifying as to these matters. They were both plainly qualified to offer expert testimony on illegal drugs and the illegal drug trade and their testimony was helpful to the jury's understanding of the evidence and facts. *Kowalski*, 492 Mich at 120.

Next, Scott argues that various actions by the prosecution denied him the right to a fair trial. However, because Scott's lawyer did not object to these instances, our review is again for plain error. *Carines*, 460 Mich at 763. In order to warrant relief on the basis of prosecutorial error, Scott must show that the prosecutor's comments or acts deprived him of a fair and impartial trial. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001).

Scott contends that at trial the prosecution elicited irrelevant and prejudicial information. A review of the record reveals that much of the challenged evidence was in fact properly admitted. The prosecutor could properly admit the evidence that officers received information about suspected drug activity at the residence where Scott was first observed. This evidence was properly admitted "to give the jury an intelligible presentation of the full context in which disputed events took place." *People v Sholl*, 453 Mich 730, 741; 556 NW2d 851 (1996). The prosecutor could also elicit testimony that Scott admitted to smoking marijuana in the car earlier that day and told someone to get the "firecrackers" out of his residence. It was also proper to present expert testimony on drugs and drug dealing. Thus, the prosecution cannot be faulted for presenting this evidence. *People v Dobek*, 274 Mich App 58, 70; 732 NW2d 546 (2007).

We agree, however, that the evidence that a search warrant was issued on probable cause to suspect illegal drug activity in 2008 was not relevant. But there is no indication that the prosecutor elicited this information in bad faith. Further, if Scott's lawyer had objected to this line of questioning at trial, the trial court could have given an instruction that would have cured any minimal prejudice. *People v Unger*, 278 Mich App 210, 235; 749 NW2d 272 (2008).

There is also no support for Scott's argument that the prosecutor erred by arguing facts that were not in evidence and misstating the law when it stated that the jury could conclude that Scott knowingly possessed the illegal drugs from the evidence that he was the only person in the car when it was stopped. This Court must examine the lower court record and evaluate the prosecutor's comments in context. *Id.* at 237. The fact that Scott was the only individual in the car at the time it was stopped was in evidence and permits an inference that the drugs found in the car were in his constructive possession. Further, a review of the record reveals that the prosecution stated that, taken together, several factors compelled a finding that Scott knowingly

possessed the illegal drugs. The fact that Scott was alone was only one of these factors. When reviewed in context, these remarks accurately reflect the evidence presented and the applicable law.

Finally, Scott argues that his trial lawyer was ineffective because he failed to make several objections at trial. This Court's review is "limited to mistakes apparent from the record." *People v Heft*, 299 Mich App 69, 80; 829 NW2d 266 (2012). Having reviewed the issues, we conclude that Scott has either failed to establish the factual predicates for his claims or failed to show that any objections would have merit. *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999); *Heft*, 299 Mich App at 83. Accordingly, he has not established an error warranting relief.

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Kelly
/s/ David H. Sawyer
/s/ Joel P. Hoekstra