STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 24, 2009
v	No. 282638 Calhoun Circuit Court
BARRY WAYNE ADAMS, Defendant-Appellant.	LC No. 2007-002803-FH

Before: Meter, P.J., and Murphy, C.J., and Zahra, J.

PER CURIAM.

Defendant appeals as of right from his conviction by a jury of possession of marijuana, MCL 333.7403(2)(d). Defendant was sentenced as a second offender, MCL 333.7413(2), to 210 days in jail. We affirm.

Defendant first argues that the Michigan Supreme Court declared unconstitutional any statute that prohibits the possession and private use of marijuana. This argument wholly lacks merit. Defendant has not sustained his burden in this constitutional challenge. *People v Sands*, 261 Mich App 158, 160; 680 NW2d 500 (2004) (the party challenging a statute's constitutionality has the burden of proving its unconstitutionality). The constitutionality of a statute is reviewed de novo on appeal. *People v Hrlic*, 277 Mich App 260, 262; 744 NW2d 221 (2007).

There is no constitutional right to possess a controlled substance. *People v Ovalle*, 222 Mich App 463, 467; 564 NW2d 147 (1997). Laws prohibiting the possession, use, and sale of marijuana do not violate the rights to privacy, equal protection, or due process. *People v Alexander*, 56 Mich App 400, 402; 223 NW2d 750 (1974). "[T]he State of Michigan has the power to pass laws against the sale and use of marijuana," *People v Sinclair*, 387 Mich 91, 103; 194 NW2d 878 (1972), and persons arrested for the sale or possession of marijuana can be prosecuted under the laws of this state, see, e.g., *id*. at 115 n 36. Defendant was convicted under a valid statute, and he is not entitled to appellate relief.[1]

[1] We note that the Michigan Medical Marijuana Act, MCL 333.26421 *et seq*., was enacted *after* defendant's conviction. Moreover, defendant does not raise this act as an issue on appeal.

Defendant next asserts that the Public Health Code does not apply to the confines of a private dwelling. However, defendant cites only *People v Doane*, 387 Mich 608; 198 NW2d 292 (1972), for the proposition that the provisions of the Public Health Code are not applicable to the confines of a private residence. That case stands for no such proposition. This claim is abandoned, because defendant failed to brief the merits of his allegations of error. *People v McPherson*, 263 Mich App 124, 136; 687 NW2d 370 (2004). An appellant may not provide only cursory treatment of an issue with citation to inapplicable law, and thus leave it to this Court to explain or rationalize his position. See *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998).

Defendant also challenges the validity of the search of his residence following his arrest by the police.[2] The district court denied defendant's motion to suppress based on an allegedly invalid search and seizure. Factual findings at a suppression hearing are reviewed for clear error. *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005). Due deference is given to the court's resolution of the factual issues, but we review de novo the ultimate ruling. *People v Wilkens*, 267 Mich App 728, 732; 705 NW2d 728 (2005).

The police arrested defendant as a result of a "warrant sweep." Defendant had an outstanding arrest warrant for failure to pay child support.[3] The police arrested and secured defendant in the front yard of his residence. One officer observed that defendant was not wearing shoes, and he asked defendant if he could go inside of the residence to obtain shoes for defendant. Defendant agreed. The officer found shoes in a bedroom near a dresser, and he also discovered what appeared to be marijuana in an open dresser drawer. The officer had defendant's permission to get shoes from the residence, and in the process, he observed contraband in plain view. "A police officer is authorized to seize without a warrant an item in plain view if the officer is lawfully in the position to observe the item and the item's incriminating nature is immediately apparent." *People v Lapworth*, 273 Mich App 424, 430; 730 NW2d 258 (2006). Shortly thereafter, the police went into the residence in order to ensure that no other individuals were present. Police may lawfully conduct a protective search of a home after an arrest is made within it if they "reasonably believe that the area in question harbors an individual who poses danger to them or others." *People v Beuschlein*, 245 Mich App 744, 757; 630 NW2d 921 (2001). Later, the police obtained a search warrant to search the residence for marijuana. Ultimately, we conclude that the warrantless search in this case was reasonable based on the totality of the circumstances. See *Ohio v Robinette*, 519 US 33, 39; 117 S Ct 417; 136 L Ed 2d 347 (1996). Thus, the district court properly denied defendant's motion to suppress based on the grounds of an invalid search and seizure.

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[2] Arguably, defendant waived this issue through inadequate briefing. See *Kelly*, *supra* at 640-641. In his primary appellate brief, defendant simply makes a conclusory assertion that the search of his residence commenced before the police obtained a valid search warrant. At any rate, we find the issue to be without merit.

[3] Defendant was convicted of that charge and sentenced to 25 to 96 months' imprisonment. *People v Adams*, unpublished opinion per curiam of the Michigan Court of Appeals, issued November 18, 2008 (Docket No. 276845).

Finally, defendant contends that individuals have an unconditional right to self-represent and to present a defense in the manner that they choose. In his appellate brief, defendant makes self-serving assertions that he was denied of "a meaningful opportunity to be heard," and that he was denied "the ability to present a defense in the manner [he] saw fit." Defendant cites no specific examples where he was denied a meaningful opportunity to be heard or the ability to present a defense. Moreover, the record undermines these assertions. Defendant represented himself at all times during the proceedings, and both the district and circuit courts entertained his motions, and permitted him to make opening statements and closing arguments, to cross-examine witnesses, and to present a defense at both the preliminary examination and trial. Defendant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claim, nor may he give only cursory treatment of an issue with little or no citation of supporting authority. *Kelly*, *supra* at 640-641. Appellate relief is unwarranted.[4]

Affirmed.

/s/ Patrick M. Meter
/s/ William B. Murphy
/s/ Brian K. Zahra

[4] We reject defendant's attempt to raise new appellate issues by way of his reply brief. See MCR 7.212(G) ("[r]eply briefs must be confined to rebuttal of the arguments in the appellee's . . . brief").