STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTAWN DWAYNE WILLIS,

Defendant-Appellant.

UNPUBLISHED
April 11, 1997

No. 180582
Muskegon Circuit Court
LC No. 94-036897-FC

Before: Bandstra, P.J., and Hoekstra and S.F. Cox*, JJ.

PER CURIAM.

Defendant was convicted by a jury of conspiracy to deliver 650 or more grams of a mixture containing cocaine, MCL 750.157a; MSA 28.354(1), MCL 333.7401(2)(a)(i); MSA 14.15(7401)(2)(a)(i), and was sentenced to a mandatory term of life imprisonment without parole. Defendant appeals as of right, and we affirm.

Defendant first argues that there was insufficient evidence to support his conviction. We disagree. In reviewing the sufficiency of the evidence, we view the evidence in a light most favorable to the prosecution. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). Two witnesses who admitted participating in the instant conspiracy testified about their repeated transportation of crack cocaine from Detroit to Muskegon County. Another witness testified that she used a beeper to contact defendant or his brother when she ran out of cocaine or had money to be picked up. Viewing the evidence in a light most favorable to the prosecution, we conclude that there was sufficient evidence of defendant's participation in a continuing drug distribution conspiracy to support his conviction of conspiracy to deliver 650 or more grams of a mixture containing cocaine.

Defendant next contends that the trial court improperly foreclosed the possibility of having testimony read back to the jury in comments that it made prior to voir dire. Because defendant did not object to these comments below, review is precluded absent manifest injustice. *People v Ullah*, 216 Mich App 669, 676; 550 NW2d 568 (1996). Here, manifest injustice will not result from our failure to

* Circuit judge, sitting on the Court of Appeals by assignment.

provide further review. The remarks at issue left open the possibility of reading back testimony in some unusual circumstances. In addition, these remarks were made prior to the final jury instructions and were apparently intended in part to encourage the jurors to pay attention to trial testimony. Accordingly, the remarks did not constitute error requiring reversal. *People v Rodriguez*, 411 Mich 872; 306 NW2d 102 (1981).

Defendant also argues that the trial court abused its discretion by admitting portions of tape recorded telephone conversations that Daneka Mathiot had with defendant and with his brother Barry Willis. *People v Crump*, 216 Mich App 210, 211; 549 NW2d 36 (1996). We disagree. These conversations were offered to show statements that the brothers made attempting to dissuade Mathiot from testifying. Defendant asserts that this evidence was irrelevant. However, we conclude that it was relevant as evidence of consciousness of guilt. See *People v Mooney*, 216 Mich App 367, 375; 549 NW2d 65 (1996); *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995).

Defendant further contends that Barry's statements in his conversations with Mathiot were inadmissible hearsay. However, the rule against hearsay is insufficient to justify exclusion of the statements because the statements were not introduced to prove the truth of the matters asserted in them. *People v Byrd*, 207 Mich App 599, 603; 525 NW2d 507 (1994). The truth or falsity of the statements was irrelevant.

We also disagree with defendant's assertion that the trial court abused its discretion by admitting into evidence cocaine seized by the police from certain locations and testimony about the cocaine found at those locations. Defendant argues that this cocaine was irrelevant because it was not connected to defendant and that, even if it had probative value, this was outweighed by the prejudicial effect of admitting this evidence. Evidence is relevant if it has any tendency to make a fact of consequence more or less probable than it would be without the evidence. MRE 401; *People v Mills*, 450 Mich 61, 66; 537 NW2d 909 (1995). The location of cocaine at these places could reasonably be viewed as significantly probative because it tended to corroborate Mathiot's testimony about the operations of the drug distribution conspiracy. This was true even if the particular cocaine found by the police may not have been supplied by or at the direction of defendant and/or his brother because the mere location of cocaine at these places tends to show that drug dealers and/or users were using these locations. Evidence may also be excluded under MRE 403 if its probative value is substantially outweighed by the danger of unfair prejudice. However, here we find no danger of unfair prejudice, as no reasonable juror would conclude simply from being shown a large quantity of cocaine that any particular individual had been involved with attempts to distribute it.

Finally, defendant claims that his life sentence constitutes cruel and/or unusual punishment in violation of the Eight Amendment of the United States Constitution and/or Const 1963, art 1, § 16. We disagree. While in *People v Bullock*, 440 Mich 15, 21, 37-41; 485 NW2d 866 (1992), our Supreme Court held that a mandatory sentence of life imprisonment without parole for simply possessing 650 grams or more of a mixture containing cocaine constituted cruel or unusual punishment, in *People v Lopez*, 442 Mich 889; 498 NW2d 251 (1993), a summary affirmance, the Court held that the same punishment was not cruel or unusual when applied to the offense of conspiracy to possess with intent to

deliver 650 grams or more of a mixture containing cocaine. To deliver is a significantly more serious offense than mere possession. We believe the crime of which defendant was convicted, conspiracy to deliver 650 grams or more of a mixture containing cocaine, to be equally as serious or more serious than the crime of conspiracy to possess with intent to deliver discussed in *Lopez, supra*.[1] Accordingly, defendant's sentence of life imprisonment without parole violates neither the protection of Const 1963, art 1, § 16, nor the less extensive protection against cruel and unusual punishment afforded by the Eighth Amendment of the United States Constitution. *Bullock, supra* at 30.

Affirmed.

/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra
/s/ Sean F. Cox

[1] Unlike the crime of simple possession, which is contained in a separate statutory section, both the crimes of delivery and possession with intent to deliver are contained in MCL 333.7401; MSA 14.15(7401).