

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ATTA BROWN,

Defendant-Appellant.

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UNPUBLISHED  
October 19, 1999

No. 203026  
Jackson Circuit Court  
LC No. 96-077966 FH

Before: Hood, P.J., and Holbrook, Jr., and Fitzgerald, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). He was sentenced to two and a half to twenty years' imprisonment. Defendant appeals as of right, and we affirm.

Defendant first argues that the trial court erred in admitting evidence regarding prior community complaints of drug trafficking in the area where the charged drug transaction took place. We disagree. The admission of evidence is within the trial court's discretion, and the trial court's decision will not be reversed absent an abuse of discretion. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). Hearsay is an extrajudicial statement offered to prove the truth of the matter asserted therein. MRE 801(c). The community complaints were admitted to explain why Officer Jeffrey Mazur began surveillance in the area where the charged drug transaction took place. Because the complaints were not offered to prove the truth of the matter asserted, the trial court's admission was proper. *People v Lewis*, 168 Mich App 255, 267; 423 NW2d 637 (1988). Furthermore, even if evidence is hearsay, admission is harmless error where the same facts are shown by other competent evidence. *Id.* at 268. In the present case, Officer Mazur testified that he had witnessed in excess of twenty drug transactions in the neighborhood. Accordingly, even if the community complaints were hearsay, any error in admission was harmless. *Id.*

Defendant next argues that the trial court erroneously admitted evidence that he was unemployed at the time of his arrest. We disagree. Evidence of poverty and unemployment is generally inadmissible because the probative value of such testimony is outweighed by unfair prejudice. *People v Stanton*, 97 Mich App 453, 460; 296 NW2d 70 (1980). Evidence of unemployment is inadmissible to

show motive or as evidence of a witness's credibility, but may be admissible in some situations. *People v Conte*, 152 Mich App 8, 14; 391 NW2d 763 (1986). In the present case, testimony regarding defendant's unemployment was admitted on only one occasion and was arguably relevant to exclude employment as a source of the cash found on defendant's person. *Stanton, supra*. Accordingly, we find no abuse of discretion in the trial court's admission of this testimony. *Lukity, supra*.

Defendant next argues that the trial court erred in allowing Officer Mazur to give "expert" opinion regarding drug dealer profiles and the guilt of defendant. We disagree. Drug profile evidence may not be admitted as substantive evidence of guilt. *People v Hubbard*, 209 Mich App 234, 242-243; 530 NW2d 130 (1995). In the present case, Officer Mazur's prior observations of drug trafficking activity was not offered as substantive drug profile evidence, but rather, was offered as background information to explain why he conducted surveillance in the area of the charged offense and why his attention was drawn to the conduct of defendant. Furthermore, Officer Mazur did not offer an opinion regarding defendant's guilt, but merely testified to his observations of defendant's exchange of crack cocaine for currency. Accordingly, this issue is without merit.

Defendant next argues that the trial court erred in failing to allow introduction of a statement made by Officer Mazur which demonstrated his bias against defendant. We disagree. A trial court's decision regarding the admission of evidence is reviewed for an abuse of discretion. *Lukity, supra*. Defendant attempted to elicit testimony from defense witness Leonard Anderson regarding a statement made by Officer Mazur. The prosecution objected on hearsay grounds. Defense counsel asserted that the statement was admissible for purposes of impeachment and to show the bias of Officer Mazur against defendant. In order to impeach a witness with a prior inconsistent statement made by the witness, a proper foundation must be established by questioning the witness as to the time and place of the statement and the person to whom the statement was allegedly made. *People v Barnett*, 165 Mich App 311, 315; 418 NW2d 445 (1987). Once a proper foundation is laid and the *witness* either admits or denies making the statement, the *witness* may be impeached by proof of the statement. *Id.* In the present case, proper impeachment did not occur because Officer Mazur was not questioned regarding his statement to Anderson, but rather, Anderson was questioned regarding the hearsay statement of Officer Mazur. Furthermore, the testimony which was offered to show bias was properly excluded based on hearsay because defendant failed to identify an exception to the hearsay rule. *People v Jones*, 48 Mich App 102, 106; 210 NW2d 145 (1973). Accordingly, the trial court properly excluded Anderson's testimony regarding statements allegedly made by Officer Mazur.

Defendant next argues that the trial court erred in precluding defendant from testifying regarding Officer Mazur's bias. We disagree. This information constituted hearsay for which no exception was identified by defendant, and we know of no such exception. *Jones, supra*. Furthermore, we note that the record reflects that the trial court did allow defense counsel to explore this area with defendant to the extent that the testimony did not involve hearsay. Defendant was able to testify that Officer Mazur was biased because he had issued tickets to defendant for littering and vehicle violations. Accordingly, the trial court did not abuse its discretion in excluding testimony regarding Officer Mazur's alleged bias.

Defendant next argues that he was denied his right to a fair trial based on the trial court's disparaging comments concerning defendant and defense counsel. We disagree. Defendant failed to

object to the alleged improper comments, thereby failing to preserve this issue for appeal absent manifest injustice. *People v Sharbnow*, 174 Mich App 94, 99; 435 NW2d 772 (1989). In any event, we examine the conduct of a trial judge to determine whether the comments or conduct was of such a nature as to unduly influence the jury and deprive defendant of his right to a fair trial. *Id.* Review of the trial court's comments reveals that they were not of such a nature as to unduly influence the jury.

Defendant next argues that the trial court erred in failing to properly instruct regarding reasonable doubt. We disagree. While defendant failed to preserve this issue for appellate review by objecting to the jury instructions, we note that defendant's position has been rejected by this Court. *People v Hubbard*, 217 Mich App 459, 487; 552 NW2d 493 (1996).

Defendant next argues that prosecutorial misconduct denied defendant a fair trial. We disagree. We review allegations of prosecutorial misconduct in context to determine whether it denied defendant a fair trial. *People v Reid*, 233 Mich App 457, 466; 592 NW2d 767 (1999). However, unpreserved allegations of prosecutorial misconduct is foreclosed unless no curative instruction could have removed any undue prejudice to defendant or manifest injustice would result from the failure to review the alleged misconduct. *Id.* Here, our failure to review will not result in a miscarriage of justice because any possible prejudice could have been cured by a timely instruction.

Lastly, defendant argues that the cumulative effect of errors justifies reversal. We have found no errors justifying reversal. *People v Kelly*, 231 Mich App 627, 646; 588 NW2d 480 (1998).

Affirmed.<sup>1</sup>

/s/ Harold Hood  
/s/ Donald E. Holbrook, Jr.  
/s/ E. Thomas Fitzgerald

<sup>1</sup> Defendant also asserted that the failure to transcribe a portion of the testimony of Officer Mazur denied defendant his right to due process and equal protection. This Court remanded this matter to the trial court for purposes of settlement of the record regarding the approximately three minutes of missing testimony. *People v Brown*, unpublished order of the Court of Appeals, entered April 29, 1998 (Docket No. 203026). The trial court complied with this Court's order and a transcription of the missing testimony was provided on appeal. Accordingly, this issue is moot.