

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WYNN KEVIN SATTERLEE,

Defendant-Appellant.

UNPUBLISHED

March 28, 2000

No. 217262

Ingham Circuit Court

LC No. 98-073173-FH

Before: Bandstra, C.J., and Cavanagh and Zahra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of conspiracy to deliver more than 650 grams of cocaine, MCL 333.7401(2)(a)(i); MSA 14.15(7401)(2)(a)(i), MCL 750.157a; MSA 28.354(1). The trial court sentenced defendant to twenty to thirty years' imprisonment. Defendant appeals as of right, and we affirm.

I

Defendant argues the trial judge erred by denying defendant's motions for a directed verdict and for a new trial. With respect to defendant's motion for a directed verdict, we review the record de novo and consider the evidence presented by the prosecution in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime charged were proved beyond a reasonable doubt. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). A trial court's decision on a motion for a new trial is reviewed for an abuse of discretion. *People v Gadomski*, 232 Mich App 24, 27; 592 NW2d 75 (1998). A trial court may grant a motion for a new trial based on the great weight of the evidence only if the evidence preponderates heavily against the verdict so that it would be a miscarriage of justice to allow the verdict to stand. *Id.* at 28.

In order to convict a defendant of conspiracy to deliver a controlled substance, the prosecution must prove that (1) the defendant possessed the intent to deliver the statutory amount as charged; (2) his coconspirators possessed the intent to deliver the statutory amount as charged, and (3) the defendant and his coconspirators possessed the specific intent to combine to deliver the statutory

amount as charged to a third person. *People v Mass*, 238 Mich App 333, 336; ___ NW2d ___ (1999). Direct proof of the conspiracy is not essential; instead, proof may be derived from the circumstances, acts, and conduct of the parties. *People v Justice (After Remand)*, 454 Mich 334, 347; 562 NW2d 652 (1997).

Defendant's argument with regard to this issue is contradictory. At one point in his brief on appeal, defendant concedes that the record indicates that defendant and Randall Guile "may have had an agreement to acquire cocaine in Florida and transport that cocaine to Michigan," but contends that an agreement to distribute the cocaine was not established. Defendant asserts that Guile's subsequent transactions did not involve defendant. Thus, defendant reasons, the prosecutor did not prove the existence of a single agreement, but rather multiple conspiracies. However, several pages later, defendant maintains that "the People proved that the factual relationship between Guile and the Appellant was at most that of a buyer (Guile) and a seller (appellant)," and hence the existence of a conspiracy was not shown pursuant to Wharton's Rule. We find neither of these contentions persuasive.

Guile testified that he and defendant made two separate trips to Florida to obtain approximately twenty kilograms of cocaine from defendant's source. Given the amount of cocaine involved, a factfinder could reasonably infer that defendant and Guile intended to sell the cocaine. See *People v Catanzarite*, 211 Mich App 573, 578; 536 NW2d 570 (1995). Additional evidence of the parties' intent to sell the cocaine was provided by Guile's testimony that he and defendant discussed their expected profits and estimated that they would split \$300,000. Furthermore, defendant retained possession of the cocaine, and Guile would contact defendant when he needed more to sell. In return, Guile would send money to defendant so defendant could pay off their debt to the Florida supplier. Considering this testimony, a reasonable factfinder could conclude that Guile acted as a distributor for defendant to move the cocaine to the ultimate users. Consequently, the elements of a conspiracy were established.¹ See *People v Porterfield*, 128 Mich App 35, 38-41; 339 NW2d 683 (1983); *People v Missouri*, 100 Mich App 310, 343-346; 299 NW2d 346 (1980); see also *Justice, supra* at 348 ("Courts must look to circumstantial evidence to determine the conspiracy's scope . . .").

In sum, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could find that the essential elements of the crime of conspiracy to deliver more than 650 grams of cocaine were proved beyond a reasonable doubt. Accordingly, the trial court did not err in denying defendant's motion for a directed verdict and did not abuse its discretion in denying defendant's motion for a new trial.

II

Defendant next claims that the trial court's refusal to give a requested instruction on multiple conspiracies requires reversal of his conviction. This Court reviews jury instructions in their entirety to determine if there is error requiring reversal. Even if jury instructions are imperfect, there is no error if they fairly presented the issues to be tried and sufficiently protected the defendant's rights. *People v Whitney*, 228 Mich App 230, 252; 578 NW2d 329 (1998). Instructions must cover each element of each offense charged, along with all material issues, defenses, and theories that have evidentiary

support. Conversely, an instruction that is without evidentiary support should not be given. *People v Wess*, 235 Mich App 241, 243; 597 NW2d 215 (1999).

The trial court instructed the jury on the elements of the offense of conspiracy. The court further explained that it was necessary to find that defendant intended to participate in the delivery of more than 650 grams of cocaine. Defendant's mere association with the conspirators was insufficient to establish that he was a member of the conspiracy. In addition, defendant was not responsible for acts of other members of the conspiracy unless those acts were part of the agreement or in furtherance of the agreement. Thus, in order to convict defendant, the jury had to find that he intended the cocaine to be delivered beyond himself and the coconspirators. The trial court's instructions fairly presented the issues to be tried and sufficiently protected defendant's rights. See *Whitney, supra*. We find no error requiring reversal.

III

Defendant further contends that the trial court abused its discretion by refusing to allow him to present evidence regarding a marijuana transaction involving Guile and his cousin. The decision whether to admit or exclude evidence is within the trial court's sound discretion and will not be disturbed absent a clear abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998).

Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401. The fact that Guile had been involved in one or more unrelated transactions involving marijuana did not make it more or less likely that defendant participated in the conspiracy to deliver cocaine. Accordingly, the trial court did not abuse its discretion in refusing to admit the evidence.

IV

Defendant next argues that the trial court erred in admitting profile testimony regarding "mules" and "mopes" in a drug dealing scheme. However, because defendant did not object to the admission of this evidence below, we review this issue only for manifest injustice. See *People v Ramsdell*, 230 Mich App 386, 404; 585 NW2d 1 (1998).

We find no manifest injustice because the testimony did not constitute inadmissible profile evidence. This Court has explained:

Drug profile evidence has been described as an informal compilation of characteristics often displayed by those trafficking in drugs. A profile is simply an investigative technique. It is nothing more than a listing of characteristics that in the opinion of law enforcement officers are typical of a person engaged in a specific illegal activity. Drug profile evidence is essentially a compilation of otherwise innocuous characteristics that many drug dealers exhibit, such as the use of pagers, the carrying of large amounts of cash, and the possession of razor blades and lighters in order to package crack cocaine

for sale. Such evidence is inherently prejudicial to the defendant because the profile may suggest that innocuous events indicate criminal activity. In other words, these characteristics may not necessarily be connected to or inherently part of the drug trade, so that these characteristics could apply equally to innocent individuals as well as to drug dealers. It is for this reason that the majority of courts have held that drug profile evidence is inadmissible as substantive evidence of guilt, because “proof” of crime based wholly or mainly on these innocuous characteristics could potentially convict innocent people. [*People v Murray*, 234 Mich App 46, 52-53; 593 NW2d 690 (1999) (citations and some quotation marks omitted).]

Here, Officer Cook testified that “mules” or “mopes” are typically lower-level members of a drug operation who are assigned to do simple tasks, such as the transportation of drugs from one location to another, by someone higher up in the organization. Cook’s testimony described a common stratagem used by high-level drug dealers to minimize their contact with the drugs and thus reduce their chances of being caught; however, it did *not* set forth innocuous characteristics that could apply equally to innocent individuals. See *id.* Because the prosecutor may use expert testimony from police officers to assist the jury by providing background or modus operandi explanation, the evidence was properly admitted. Consequently, we find no manifest injustice. See *id.* at 56.

V

Finally, defendant argues the trial judge abused his discretion when he refused to allow testimony that Guile had lied and placed blame on others in the past when charged with a drug offense. The decision whether to admit or exclude evidence is within the trial court’s discretion. *Starr, supra* at 494.

Defendant contends that the evidence was admissible pursuant to MRE 406, which allows the admission of a person’s habit to prove that the conduct of a person on a particular occasion was in conformity with the habit. We disagree. For evidence of habit to be admissible, the evidence must establish a set pattern or demonstrate that an act was done routinely or performed on countless occasions. *Laszko v Cooper Laboratories, Inc.*, 114 Mich App 253, 256; 318 NW2d 639 (1982). Evidence that an act was performed a single time several years previously is insufficient to establish a habit. Accordingly, the trial court did not abuse its discretion by refusing to admit the evidence.

Affirmed.

/s/ Richard A. Bandstra

/s/ Mark J. Cavanagh

/s/ Brian K. Zahra

¹ Defendant relies on the five factors set forth in *People v Mezy*, 453 Mich 269, 285; 551 NW2d 389 (1996) (Weaver, J.), to determine whether there are multiple conspiracies or only one. However, these factors are merely an aid in determining whether there are multiple conspiracies or only one under the totality of the circumstances. The essence of the determination is whether there is one agreement to

commit two crimes or more than one agreement, each with a separate object. In the present case, a reasonable factfinder could conclude that

all the accused were embarked upon a venture, in all parts of which each was a participant, and an abettor in the sense that the success of that part with which he was immediately concerned, was dependent upon the success of the whole. [*Missouri, supra* at 346, quoting *United States v Bruno*, 105 F2d 921, 922 (CA 2, 1939).]

In order to convict a defendant of criminal conspiracy, it is not necessary to show that each accused conspirator knew the full scope of the conspiracy or participated in carrying out each detail, or that he was acquainted with each of his coconspirators or knew the exact part played by each of them. *People v Grant*, 455 Mich 221, 237, n 20; 565 NW2d 389 (1997).