

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRENCE DESHAWN COKLOW,

Defendant-Appellant.

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UNPUBLISHED

August 23, 2002

No. 232357

Macomb Circuit Court

LC No. 00-001903-FH

Before: White, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Defendant was convicted by a jury of delivery of cocaine greater than 50 grams but less than 225 grams, MCL 333.7401(2)(a)(iii), possession of marijuana with intent to deliver, MCL 333.7401(2)(d)(iii), maintaining a drug house, MCL 333.7405(d), possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv), and possession of a firearm during commission of a felony, MCL 750.227b. Defendant was sentenced to concurrent terms of ten to twenty years for the delivery, 23 to 48 months for possession of marijuana with intent to deliver, and 16 to 24 months for maintaining a drug house, and consecutive terms of one to twenty years for possession of less than 50 grams of cocaine with intent to deliver, and two years for felony firearm. Defendant appeals as of right and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that it was a denial of his due process rights to allow the police officer in charge of the case to be qualified as an expert witness and testify that the circumstances of the case showed that defendant had the intent to deliver drugs and exhibited the profile of a mid- to large-scale drug dealer.

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.” *People v Murray*, 234 Mich App 46, 52-53; 593 NW2d 690 (1999). Drug profiling “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.” *People v Hubbard*, 209 Mich App 234, 239; 530 NW2d 130 (1995). The problem with drug profiling is that it “often changes to meet the facts of any given case. The broad brush painted by such profiles inevitably will cover many innocent

individuals.” *Id.* at 242. At the same time, courts generally have allowed expert testimony to explain the “significance of seized contraband or other items of personal property.” *Id.* at 239.

Because defendant failed to preserve this issue for appeal, this Court’s review is for plain error affecting defendant’s substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). A showing of prejudice is required, “i.e., that the error affected the outcome of the lower court proceedings.” *Id.*

Defendant relies on *Hubbard, supra*, in which a police officer, testifying as an expert witness at the defendant’s trial for drug possession with intent to deliver, listed eleven different characteristics of a drug dealer. This Court concluded that the evidence was inappropriately used as substantive evidence in that (1) the purpose of the profile was to “explain some of the reasons certain activities are undertaken to show a consistent pattern of behavior”; (2) during closing argument, the prosecutor pointed to the profile as evidence of the defendant’s guilt; and (3) no limiting instruction was given on the use of the profile evidence. *Id.* at 242-243.

In *People v Griffin*, 235 Mich App 27; 597 NW2d 176 (1999), a police officer, qualified as an expert witness in a case involving drug charges including maintaining a drug house, testified that he observed people entering and leaving the house in question in a manner indicative of drug trafficking. *Id.* at 44. The defendant did not object to this testimony. This Court noted:

We find no manifest injustice here. As this Court has stated, citing various federal cases, “the use of drug profiles as substantive evidence of a defendant’s guilt has been widely condemned.” *People v Hubbard*, 209 Mich App 234, 239-240; 530 NW2d 130 (1995). However, the detective was testifying in this instance as an expert concerning his impression that drug trafficking was taking place at 732 Bethany. The status of defendant as a drug dealer, and that of 732 Bethany as a drug house, were questions before the jury. Expert testimony concerning indicia of drug trafficking relating to both, which was not within the knowledge of a layperson, aided the jury in resolving those questions. Thus the testimony was not improper drug profile evidence, but rather proper expert testimony concerning material issues. [*Id.* at 44-45.]

In *People v Stimage*, 202 Mich App 28; 507 NW2d 778 (1993), the defendant was charged with possession with intent to deliver cocaine. This Court concluded that the admission, absent defense objection, of a police officer’s testimony about the significance of the quantity of drugs found in the defendant’s possession as related to the issue of intent to deliver did not constitute manifest injustice. *Id.* at 29-30. “The fact that the testimony embraced the ultimate issue of intent to deliver did not render the evidence inadmissible.” *Id.* at 30. In *People v Ray*, 191 Mich App 706; 479 NW2d 1 (1991), this Court held that the trial court did not abuse its discretion in qualifying a police officer as an expert and allowing him to testify that the quantity and condition of the drugs in the defendant’s possession indicated intent to deliver. “Such information was not within the knowledge of a layman, and [the police officer’s] testimony would have aided the jury in determining defendant’s intent and, thus, his guilt of the charged offense.” *Id.* at 708.

In the instant case, Detective Berlin testified as an expert witness about the significance of the more than fifty grams of cocaine defendant sold to an undercover police officer, and of the quantity of cocaine Berlin found in defendant's car. Detective Rouhib testified as an expert witness about the significance of the scale and the quantity of small baggies found at defendant's apartment. Neither Berlin nor Rouhib offered a laundry list of broadly drawn characteristics of drug dealers for the purpose of establishing that defendant was a drug dealer, as was the case in *Hubbard, supra*. Rather, the officers addressed an issue at trial, namely, defendant's intent. Their testimony showed that the quantity of cocaine in defendant's possession, as well as the scale and baggies found at his apartment, were indicative of intent to deliver. The purpose was to explain the significance of these items to aid the jury in reaching a decision on a material issue. As such, defendant has not shown that the admission of Berlin's and Rouhib's testimony constituted plain error. Assuming *arguendo* that admission of their testimony was error, defendant has not shown prejudice. There was unrefuted evidence at trial that defendant sold over fifty grams of cocaine to an undercover policeman. A quantity of cocaine and marijuana, packaging materials, a scale and a gun were found among defendant's belongings in an apartment he acknowledged sharing with his girlfriend. Because defendant has not shown prejudice, his claim must fail.

Defendant next argues that he was denied due process by the admission of unfairly prejudicial evidence concerning past bad acts, from which the prosecutor improperly argued that defendant had a propensity to deal drugs. Because defendant failed to preserve this issue for appeal, this Court's review is for plain error affecting defendant's substantial rights. *Carines, supra* at 763-764.

At issue is the statement defendant made following his arrest to Detective Bender at the police station, after being read his rights. Bender testified:

Q. Did you have occasion to ask Mr. Coklow if he had been selling cocaine?

A. Yes, that was one of my questions.

Q. And what if anything did he respond?

A. He mentioned that he sold I believe on a couple of occasions and that he wanted—or he was making money to pay his bills.

Even assuming error in the admission of this statement, defendant was not prejudiced where there was abundant testimony that defendant had sold drugs to an undercover officer.

Finally, defendant argues that he was denied effective assistance of counsel by his attorney's failing to object or move for a mistrial when the prosecutor introduced evidence through defendant's statement to police that he had engaged in other drug sales in the past. A claim of ineffective assistance of counsel is reviewed *de novo*. *People v McRunels*, 237 Mich App 168, 171; 603 NW2d 95 (1999). To establish ineffective assistance of counsel, defendant must show that counsel's performance "fell below an objective standard of reasonableness and was prejudicial, thereby denying the defendant a fair trial." *People v Wilson*, 242 Mich App 350, 354; 619 NW2d 413 (2000). With regard to prejudice, defendant must show that but for counsel's error there is a reasonable probability the result of the trial would have been different.

*People v Shively*, 230 Mich App 626, 628; 584 NW2d 740 (1998). For the reasons stated above, defendant cannot show prejudice and his claim must fail.

Affirmed.

/s/ Helene N. White  
/s/ Joel P. Hoekstra  
/s/ Peter D. O'Connell