

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PAUL E. MCDANIEL,

Defendant-Appellant.

UNPUBLISHED
December 3, 2002

No. 234028
Wayne Circuit Court
LC No. 00-000613

Before: Fitzgerald, P.J., and Bandstra and Gage, JJ.

PER CURIAM.

Defendant appeals as of right his conviction, following a jury trial, of one count of delivery of less than fifty grams of heroin, MCL 333.7401(2)(a)(iv). The trial court sentenced defendant to one to twenty years' imprisonment. We affirm.

Defendant's sole issue on appeal is that the trial court erred in admitting into evidence, without the testimony of the chemist who conducted the analysis, a police laboratory report identifying the substance delivered by defendant as heroin. Defendant claims that the report was hearsay, inadmissible under any exception to the general rule precluding such evidence, see MRE 802, and that its admission denied him the right of confrontation. We disagree.

Generally, the decision to admit evidence is within the trial court's discretion and will not be disturbed absent an abuse of that discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). However, where, as here, a decision regarding the admission of evidence involves a preliminary question of law, such as whether a statute or rule of evidence precludes admission of the evidence, the issue is reviewed de novo. *People v Washington*, 251 Mich App 520, 524; 650 NW2d 708 (2002).

The prosecutor offered the report at issue here for admission into evidence under MRE 803(6) and (8), the business and public records exceptions to the hearsay rule. The latter of these rules allows for the admission of

[r]ecords, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth . . . matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel
[MRE 803(8).]

In *People v Stacy*, 193 Mich App 19; 484 NW2d 675 (1992), this Court analyzed the rule's language excluding observations by police officers and other law enforcement personnel and concluded that the exclusion was intended to apply only to observations made by law enforcement officials at the scene of the crime or while investigating a crime, and not to reports of routine matters made in nonadversarial settings. *Id.* at 33. The panel further held that a defendant's confrontation rights are not infringed by the admission of a report under this rule because "the public records exception to the hearsay rule is among the 'safest' of such exceptions in terms of reliability," and that, therefore, "no independent inquiry into reliability is required for confrontation clause purposes when MRE 803(8) is satisfied." *Id.* at 34, citing *Ohio v Roberts*, 448 US 56, 67 n 8; 100 S Ct 2531; 65 L Ed 2d 597 (1980) and *United States v DeWater*, 846 F2d 528, 530 (CA 9, 1988).

In this case, the record indicates that the chemical analysis report at issue was prepared as a "routine matter" by a chemist working at a police laboratory, i.e., a public office or agency. *Stacy*, *supra* at 33. Given the routine nature of the analysis and report at issue, and considering that there is no evidence that the chemist who performed the analysis was biased or otherwise so involved in the investigation as to render his services adversarial, the evidence was properly admissible under MRE 803(8). Accordingly, we do not conclude that the trial court erred in admitting the evidence.¹

Nonetheless, even were we to conclude that admission of the lab report under MRE 803(8) was error, we would find such error to be harmless. See MCR 2.613(A). In addition to presenting the report, the prosecution also presented the testimony of Steven Gyure, a police chemist who worked in the laboratory with the chemist who actually prepared the report. Although acknowledging that he had no personal knowledge of the specific circumstances surrounding the creation of the report at issue, Gyure vouched for the authenticity of the report and explained that all such reports are prepared using standard tests and procedures which, in his thirty years at the laboratory, had yet to result in misidentification of a tested substance. Given that defendant does not contest the accuracy of the report at issue, and considering that the testimony of the chemist who actually prepared the report would have contributed little, if anything, beyond that offered by Gyure, any error in the admission of the report under MRE 803(8) was harmless.

We affirm.

/s/ Richard A. Bandstra
/s/ Hilda R. Gage

¹ Because the evidence was properly admissible under MRE 803(8), we need not address its admissibility as a business record under MRE 803(6).