

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KESHUNA LAFAYE ABCUMBY,

Defendant-Appellant.

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UNPUBLISHED

December 14, 2004

No. 249961

Oakland Circuit Court

LC No. 2003-188630-FH

Before: Murphy, P.J., and White and Kelly, JJ.

PER CURIAM.

Defendant was charged with possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv), possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), and two counts of possession of a firearm during the commission of a felony, MCL 750.227b. Following a jury trial, defendant was convicted of the two controlled substance offenses, for which she was sentenced to lifetime probation with the first six months in jail. Defendant appeals her convictions as of right and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole issue on appeal is that she was denied a fair trial due to the erroneous admission of expert testimony concerning drug profile evidence. We disagree.

A profile is a list of usually innocuous characteristics that police believe to be typical of a person engaged in a particular illegal activity. *People v Murray*, 234 Mich App 46, 52-53; 593 NW2d 690 (1999); *People v Hubbard*, 209 Mich App 234, 239; 530 NW2d 130 (1995). "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." *Murray, supra*. Drug profile evidence is not admissible as substantive evidence of guilt. *Hubbard, supra* at 241. An expert witness is not permitted to opine "that, on the basis of the profile, the defendant is guilty," or to "compare the defendant's characteristics to the profile in a way that implies that the defendant is guilty." *People v Williams*, 240 Mich App 316, 321; 614 NW2d 647 (2000). Expert testimony is admissible, however, "to aid the jury in understanding evidence in controlled substance cases" and "to explain the significance of items seized and the circumstances obtaining during the investigation of criminal activity." *Murray, supra* at 53. In other words, the prosecutor is not allowed to use profile evidence to argue that the defendant must be guilty because she fits the profile, but can "rely[ ] on the facts of the case to prove guilt

when understood in the context of the profile . . . .” *Id.* at 59. Thus, elements of profile evidence may be admissible to “aid[ ] the jury in intelligently understanding the evidentiary backdrop of the case, and the modus operandi of drug dealers . . . .” *Id.* at 56.

With one exception, we find no error in the trial court’s admission of the evidence in question. Officer Niedjelski did not testify that dealers exhibit certain characteristics, that defendant exhibited the same characteristics and that defendant must therefore be a dealer. Rather, he testified that the quantity of drugs, the scales, the large sums of cash and the presence of a weapon, plus the absence of any paraphernalia associated with the personal use of drugs, were consistent with dealing rather than using. In other words, Niedjelski’s knowledge of the drug trade was used to help the jury understand the significance of the amount of the drugs, plus other items found in the apartment, and such evidence was circumstantial evidence of an intent to deliver. *People v Wolfe*, 440 Mich 508, 524; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Fetterley*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998). Although Niedjelski testified that the quantity of drugs, the presence of certain items, and the absence of other items led him to conclude that the drugs were possessed with intent to deliver, his opinion on the ultimate issue to be decided was admissible. MRE 704; *People v Ray*, 191 Mich App 706, 708; 479 NW2d 1 (1991).

The only testimony arguably improper was the testimony regarding the fact that the money found in the apartment was in small denominations. Carrying cash in small rather than large denominations is an innocent characteristic not necessarily indicative of drug dealing. However, the significance of the denominations was not mentioned again. In closing argument, the prosecutor noted only that there was a lot of “cash lying around, wrapped in bundles in a drawer, stuffed under the mattress,” not that it was in smaller bills. Moreover, defendant did not object and a proper and timely instruction could have cured any prejudice. Cf. *People v Lumsden*, 168 Mich App 286, 299; 423 NW2d 645 (1988). Under the circumstances, we find no basis for reversal.

Affirmed.

/s/ William B. Murphy  
/s/ Helene N. White  
/s/ Kirsten Frank Kelly