

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SALAH DADO,

Defendant-Appellant.

UNPUBLISHED

March 15, 2007

No. 266962

Genesee Circuit Court

LC No. 04-015279-FH

Before: Cooper, P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of possession with intent to deliver five or more but less than forty-five kilograms of marijuana, MCL 333.7401(2)(d)(ii). He was sentenced to probation for three years, with the first ninety days to be served in jail. He appeals as of right. We affirm.

I

On January 9, 2004, the Genesee County Sheriff's Department was conducting surveillance of Matthew Hilton, a suspected drug dealer, when they conducted a traffic stop of the vehicle he was in and found marijuana in the car. The officers arrested Matthew Hilton and his cousin Wilbur Hilton, who was also in the car. Wilbur informed the police that there were quantities of marijuana at Champion Communications, a telecommunications store co-owned by Wilbur and defendant. The officers searched the store with Wilbur's consent. The police found more than five kilograms of marijuana, packaging materials, a digital scale, dryer sheets, three Fila athletic bags, food saver bags, and Ziploc bags. Defendant's fingerprints were found on some of the bags. The officers later searched defendant's home and found a Fila athletic bag similar to the bags found in the store, but it did not contain any illegal substance.

Defendant arrived at the store while the search was in progress. The police searched him and found \$4,699 in cash. Several photographs of defendant were displayed in the store's office. Defendant admitted that he was aware that marijuana was present in the office.

At trial, the prosecutor sought to qualify Lieutenant Terrence Green as an expert witness on drug trafficking, particularly drug trafficking in Genesee County. Defendant objected, arguing that the officer-in-charge could not testify as an expert witness, that Green's expert testimony was irrelevant because defendant intended to stipulate that the supply of marijuana

was intended for distribution, and that Green's testimony would not withstand a *Daubert*¹ analysis. The trial court overruled his objections. Green testified that possession of a large quantity (more than four ounces) of marijuana is indicative of drug trafficking. He stated that other indicators of drug trafficking are possession of packaging material, scales, drug tabulation sheets, food saver bags (to contain the smell), and dryer sheets (to mask the smell).

Green also testified as a fact witness regarding the surveillance of Matthew Hilton, the arrests of Matthew and Wilbur Hilton, and the search of the store. Green gave a detailed account of all items seized during the search of the store. When Green's review of the tabulation was complete, the prosecutor questioned him as follows:

- Q. [I]n your opinion as an expert [in the field of drug trafficking], given the evidence that you reviewed here in open court, what does the possession of this marijuana indicate to you? And please explain.
- A. It exhibits distribution. This marijuana is used to distribute to other sellers. I base that on number one, the amount, speaking of over twenty-six pounds. You have the packaging, the dryer sheets, scales, large sums of U.S. currency.

Green testified that the marijuana was packed in quantities of 1-1/2 pounds, which was "[v]ery consistent with trafficking."

On cross-examination, Green stated that Matthew Hilton, the original subject of the investigation, was not charged with any offense related to the supply of cocaine found in the Champion Communications store. Green explained, "through my investigation – my thorough investigation I proved that Matthew Hilton had no part in this large amount of marijuana." When defense counsel asked Green whether Wilbur Hilton was charged in this matter, the prosecutor objected on relevance grounds. Defense counsel responded, "Wilbur Hilton was a co-defendant here and I think that it's fair for this jury to know what happened with Wilbur [Hilton]." The trial court sustained the objection.

II

Defendant first argues that the trial court erred in permitting Green to testify as an expert witness concerning drug trafficking. We review the trial court's decision to admit Green's testimony for an abuse of discretion. *People v Manser*, 250 Mich App 21, 31; 645 NW2d 65 (2002).

Defendant acknowledges that the rules of evidence do not prohibit police officers from testifying as experts, but he argues that the inherent danger of such testimony may render the testimony unacceptably prejudicial. The substance of this argument invokes MRE 403, which provides that relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury . . .

¹ *Daubert v Merrill Dow Pharmaceuticals, Inc.*, 509 US 579; 113 S Ct 2786; 125 L Ed 2d 469 (1988).

.” We are not persuaded that Green’s dual role as a fact and expert witness created any danger of unfair prejudice. Defendant did not dispute that the drugs in question were intended for delivery; rather, his defense was that the evidence was insufficient to establish that he possessed the drugs. Defendant argues that Green’s certification as an expert witness bolstered the prosecution’s case and likely led the jurors to believe that the marijuana was in defendant’s possession. This argument is purely speculative. There was no connection between Green’s opinion that the drugs were intended for sale and the prosecutor’s contention that defendant possessed the drugs. The prosecutor never suggested that Green’s expert opinion had any bearing on the question of possession; rather, the prosecutor sought to prove possession with evidence that the marijuana was kept in a store that defendant owned and operated. Under these circumstances, defendant was not unfairly prejudiced by Green’s dual role. No error requiring reversal occurred.

Defendant also argues that the trial court failed to exercise its gatekeeping function as required by MRE 702 and *Daubert v Merrill Dow Pharmaceuticals, Inc*, 509 US 579; 113 S Ct 2786; 125 L Ed 2d 469 (1988). MRE 702 governs the admissibility of expert testimony and provides:

If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

In *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 780; 685 NW2d 391 (2004), our Supreme Court held that MRE 702 imposes

an obligation on the trial court to ensure that any expert testimony admitted at trial is reliable. While the exercise of this gatekeeper role is within a court’s discretion, a trial judge may neither “abandon” this obligation nor “perform the function inadequately.”

See also *Daubert, supra* at 589 (concluding from similar language in FRE 702 that “the trial judge must ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable”), and *Kumho Tire Co, Ltd v Carmichael*, 526 US 137, 149-150; 119 S Ct 1167; 143 L Ed 2d 238 (1999) (applying reliability requirement to technical and non-scientific areas of expertise). In *United States v Lopez-Medina*, 461 F3d 724, 742-743 (CA 6, 2006), the court held that the *Daubert* gatekeeping requirements apply to a police officer’s expert testimony concerning drug trafficking. The court stated that such testimony satisfied the reliability requirement where the officer had sufficient training and experience in investigating drug-related offenses. *Id.*

Here, Green’s experience in investigating drug trafficking operations in Genesee County was sufficient to establish the reliability requirement. As an experienced police officer, he was capable of giving reliable testimony on how to recognize evidence of drug sales. Accordingly, the trial court did not abuse its discretion in permitting the expert testimony.

III

Defendant next argues that the trial court erred in excluding testimony regarding the disposition of charges against Wilbur Hilton, who had pleaded guilty to a reduced charge of possession with intent to deliver a smaller quantity of marijuana found in the car. Defendant argues that the evidence of third-party guilt was relevant to the question of defendant's innocence, because Hilton's conviction suggested that Wilbur Hilton, not defendant, possessed the marijuana in question. Defendant expands on this issue by claiming that Hilton's additional charge for possession of the marijuana found in the store – a charge that was later dismissed – was relevant to the question of defendant's guilt.

In *People v Lytal*, 415 Mich 603, 612; 329 NW2d 738 (1982), our Supreme Court stated that “[i]t is an established rule of law that the conviction of another person involved in the criminal enterprise is not admissible at defendant's separate trial.” As support for this principle, the Court cited *People v Crawl*, 401 Mich 1, 33; 257 NW2d 86 (1977) (Levin, J.), which states that an accomplice's guilty plea or trial conviction “is not admissible *against* another person.” (Emphasis added.) The purpose of this rule is to protect a defendant from unfair prejudice that would inure from evidence that a codefendant has already been adjudicated guilty. Accordingly, a defendant may introduce evidence of a codefendant's guilty plea as exculpatory evidence.

Nonetheless, the trial court properly excluded the evidence of Wilbur Hilton's guilty plea. 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; see also *People v Aldrich*, 246 Mich App 101, 114; 631 NW2d 67 (2001). Generally, all relevant evidence is admissible, unless otherwise dictated by law, and evidence that is not relevant is not admissible. MRE 402; *Aldrich*, *supra* at 114. Hilton's guilty plea did not relate to the marijuana found in the store, but rather arose from the marijuana found in the car during the traffic stop. Because defendant was not charged with any offense involving the marijuana found during the earlier traffic stop, Wilbur's plea-based conviction arising from that stop was not relevant, and introducing evidence of it may have misled the jury. See MRE 403. Additionally, the trial court did not commit an error requiring reversal in disallowing the evidence that Wilbur Hilton had been charged in connection with the marijuana found at the store. Hilton was merely *charged* with possessing this marijuana and not *convicted* of possessing it. Evidence of the charge was only marginally relevant and was likely to have misled the jury. See MRE 403. We simply cannot conclude that the trial court abused its discretion in disallowing the evidence.

Affirmed.

/s/ Jessica R. Cooper
/s/ Mark J. Cavanagh
/s/ Patrick M. Meter