STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TEARIS MONTET COOPER,

Defendant-Appellant.

UNPUBLISHED
July 28, 2000

No. 210866
Genesee Circuit Court
LC No. 96-054654-FH

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

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of delivery of more than fifty, but less than 225, grams of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii). Defendant was convicted as charged and sentenced to ten to thirty years in prison. We affirm.

Defendant first contends that the trial court erred in refusing to excuse a juror for cause. We review de novo the trial court's decision to grant or deny a challenge for cause. *People v Legrone*, 205 Mich App 77, 82; 517 NW2d 270 (1994). In the instant case, a juror informed the court that her son died from an overdose of drugs and alcohol in 1950. When asked, the juror told the court that the experience might make it difficult for her to sit as a juror in the case, but that her experience would not prejudice her against one side or the other. In response to further questioning, she stated that she did not think she could base her decision solely on the facts without incorporating memories of her son, and that she did not know whether she could be impartial. However, after still further questioning, the juror stated that regardless of what happened to her son, she would try to overcome those memories if she were picked as a juror. She also agreed that defendant was presumed innocent of the charge against him and stated that if the prosecutor failed to prove his case beyond a reasonable doubt her verdict would be not guilty. When the court asked "The bottom line is, do you think you can be fair in this case?" the juror responded, "I think I can." Defendant challenged the juror for cause and used a peremptory challenge to excuse her. He now argues on appeal that he was denied a fair trial because of the trial court's refusal to properly excuse the juror for cause.

MCR 2.511 (D) governs challenges for cause and provides in pertinent part:

(D) Challenges for Cause. The parties may challenge jurors for cause, and the court shall rule on each challenge. A juror challenged for cause may be directed to answer questions pertinent to the inquiry. It is grounds for a challenge for cause that the person:

* * *

(4) shows a state of mind that will prevent the person from rendering a just verdict, or has formed a positive opinion on the facts of the case or on what the outcome should be;

(5) has opinions or conscientious scruples that would improperly influence the person's verdict;

In *People v Lee*, 212 Mich App 228; 537 NW2d 233 (1995), this Court stated that a four-part test is used to determine whether an error in refusing a challenge for cause merits reversal.

> There must be a clear and independent showing on the record that (1) the court improperly denied a challenge for cause, (2) the aggrieved party exhausted all peremptory challenges, (3) the party demonstrated the desire to excuse another subsequently summoned juror, and (4) the juror whom the party wished later to excuse was objectionable.

Factors (2) and (3) are established by the record. We need not address whether the record sufficiently establishes factor (4), because we conclude that factor (1) is not present because the trial court did not err in refusing to excuse the juror for cause. *Lee, supra*.

The juror confirmed that she knew defendant was presumed innocent and that if the prosecution failed to demonstrate that defendant was guilty beyond a reasonable doubt her verdict would be not guilty. She also declared that she would be fair. Accordingly, we hold that the trial court did not err in refusing to dismiss the juror for legal cause. *Lee, supra* at 249.

Defendant also contends that the trial court erred in refusing defendant's request that CJI2d 5.7, regarding addict-informers, be read to the jury. Jury instructions must include all of the elements of the crime charged and must not exclude any material issues, defenses or theories if there is evidence to support them. *People v Daniel*, 207 Mich App 47, 53; 523 NW2d 830 (1994). We review jury instructions de novo on appeal. *People v Reid*, 233 Mich App 457, 466; 592 NW2d 767 (1999).

In *People v Griffin*, 235 Mich App 27, 40; 597 NW2d 176 (1999), this Court stated:

> [A]n instruction concerning special scrutiny of the testimony of addict-informants should be given upon request, where the testimony of the informant is the only evidence linking the defendant to the offense. [Quoting *People v Smith*, 82 Mich App 132, 133-134; 266 NW2d 476 (1978), citing *People v Atkins*, 397 Mich 163, 170; 243 NW2d 292 (1976).]

The addict-informer instruction should be used where the uncorroborated testimony of an addict-informer is the only evidence linking the accused with the alleged offense. *Griffin, supra* at 40. Here, the informant's testimony was corroborated by the testimony of police officers, who worked with the informant to set up the purchase and closely observed his activities. Prior to the controlled buy, the informant informed Lieutenant Compeau that he had arranged to purchase two ounces of cocaine from defendant. Officer Rhind thoroughly searched the informant and his vehicle for narcotics and currency before he was given $2,500 in pre-recorded funds. Officer Rhind then drove to the apartment complex ahead of the informant and parked in a location from where he could observe the buy. Lieutenant Compeau testified that he followed the informant to the apartment complex. Compeau never lost sight of the informant's vehicle, and no one approached the vehicle in transit. Officer Rhind testified that he observed the informant pull into the apartment complex and park his vehicle. The informant was the only person in the vehicle. Shortly thereafter, Officer Rhind observed defendant walk toward the informant's vehicle. In his right hand, defendant was carrying a baseball sized object covered by a white towel. Defendant entered the informant's vehicle and left approximately six minutes later. Lieutenant Compeau testified that he followed the informant to the rendezvous spot and discovered a plastic bag containing cocaine, wrapped in a paper towel, in the informant's vehicle.

Defendant argues that because Officer Rhind was unable to see the ultimate delivery between defendant and the informant, the specific element of delivery was uncorroborated and the addict-informer instruction should have been given. However, the direct observation of defendant carrying the towel covered object into the informant's car, and the later observation of the cocaine covered in a paper towel is sufficient corroboration to support the denial of the instruction.

Affirmed.

/s/ Helene N. White
/s/ Martin M. Doctoroff
/s/ Peter D. O'Connell