

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEREK HUSTON,

Defendant-Appellant.

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UNPUBLISHED

February 20, 2001

No. 217595

Wayne Circuit Court

LC No. 98-007126

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

METER, J. (concurring in part and dissenting in part).

I respectfully dissent from the portion of the majority opinion that reverses the defendant's conviction and sentence based on drug profile evidence, but I concur in the majority's analysis of the remainder of the issues. I would affirm the defendant's conviction and sentence.

Even assuming, *arguendo*, that the drug profile testimony at issue was improperly admitted, I do not believe that its admission warrants reversal. As stated in *People v Murray*, 234 Mich App 46, 64; 593 NW2d 690 (1999), the proper standard for assessing the impact of improperly-admitted testimony is whether it is "highly probable" that the testimony did not affect the jury's verdict. I simply cannot discern how the challenged testimony here could have affected the jury's verdict. Indeed, the properly-admitted evidence showed that police officers watched defendant approach a car and obtain money from the occupant, walk over to co-defendant Duncan, obtain a small item from Duncan, and return to the car and hand the item to the driver. This transaction followed a hand-to-hand delivery between Duncan and a pedestrian. When arrested, Duncan had forty-seven small packages of cocaine on his person. This evidence overwhelmingly supported the inference that defendant and Duncan were selling cocaine. In light of the properly-admitted, overwhelming support for this inference, I find it "highly probable" that additional evidence of drug-selling (i.e., the drug profile evidence at issue) did not contribute to the jury's conclusion that defendant and Duncan were indeed selling cocaine and their corresponding finding that defendant possessed the cocaine with intent to deliver it.

I would affirm.

/s/ Patrick M. Meter