

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRODRICK DARNELL DINKINS,

Defendant-Appellant.

UNPUBLISHED
November 6, 2001

No. 224372
St. Clair Circuit Court
LC No. 99-000742-FH

Before: Doctoroff, P.J., and Wilder and Schmucker*, JJ.

MEMORANDUM.

Defendant was convicted by a jury of delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv), and was sentenced as a second-offense habitual offender, MCL 769.10, to serve one to thirty years in prison. He appeals as of right, and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant contends that certain testimony of three police officers was improper character evidence under MRE 404(b). Because defendant never objected at trial on this specific basis, the issue is not properly preserved for appellate review. *People v Aguwa*, 245 Mich App 1, 6; 626 NW2d 176 (2001). Unpreserved claims of nonconstitutional error are reviewed to determine whether plain error occurred affecting the defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764, 774; 597 NW2d 130 (1999).

Viewed in context, most of the challenged testimony was probative of the respective officers' familiarity with defendant *during the surveillance period*, and therefore was relevant to the issues of identification and the res gestae of the offense. *People v LaPorte*, 103 Mich App 444, 448; 303 NW2d 222 (1981); *People v Amison*, 70 Mich App 70, 74; 245 NW2d 405 (1976). Even though Detective Butts and Sergeant Szczesny's testimony that their familiarity with defendant arose out of contacts with him during their lengthy police careers was prejudicial, because identification was an issue the probative value of the testimony outweighed its prejudicial effect. See *People v Gendron*, 144 Mich App 509, 515; 376 NW2d 143 (1985); MRE 403. We also note that none of the challenged testimony concerned any prior bad acts or criminal activities of defendant; therefore, defendant's reliance on MRE 404(b) and the cases analyzing that rule are inapposite. *LaPorte, supra*; *People v Steiner*, 136 Mich App 187, 196-197; 355 NW2d 884 (1984).

* Circuit judge, sitting on the Court of Appeals by assignment.

In any event, even though the officers' testimony was improper to some extent, we conclude that the error was harmless given the weight and strength of the untainted evidence establishing defendant's guilt of the charged offense. *People v Lukity*, 460 Mich 484, 491-496; 596 NW2d 607 (1999); *People v Snider*, 239 Mich App 393, 419-420; 608 NW2d 502 (2000). Reversal is only warranted when it affirmatively appears that it is more probable than not that the error was outcome determinative. *Lukity, supra* at 495-496. Any error here was not outcome determinative.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Kurtis T. Wilder

/s/ Chad C. Schmucker