

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MONTEZ ANTHONY BROOKS,

Defendant-Appellant.

UNPUBLISHED
December 4, 2001

No. 225042
Washtenaw Circuit Court
LC No. 95-004015-FH

Before: O’Connell, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right from his jury conviction for possession with intent to deliver between 50 and 225 grams of a controlled substance, in violation of MCL 333.7401(2)(a)(iii). We affirm.

We consider first defendant’s argument that the prosecutor presented insufficient evidence to support a finding that defendant constructively possessed the crack cocaine. We review this question to determine “whether the evidence, viewed in a light most favorable to the people, would warrant a reasonable juror in finding guilt beyond a reasonable doubt,” with all reasonable inferences from both circumstantial and direct evidence drawn, and all credibility choices made, in support of the people’s case. *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000). Viewed according to this standard, we find that the evidence presented at trial was sufficient to prove defendant’s guilt beyond a reasonable doubt.

Because the prosecutor introduced substantial evidence that defendant had control over the apartment in which the crack cocaine was found, there was substantial evidence that defendant had control over the crack cocaine. See *People v Echavarria*, 233 Mich App 356, 370; 592 NW2d 737 (1999). Defendant possessed the keys to the apartment, and the evidence indicated that only he had such keys. The person in whose name the apartment was registered testified that defendant lived in the apartment, at least at one time. That witness also denied that she lived in or visited the apartment. Police discovered defendant’s personal identification in the apartment. The management staff observed defendant at the apartment complex, inquiring about renting a larger apartment, in a way that suggested he considered this apartment to be his. Defendant ordered, paid for, and signed for delivery of a waterbed at the apartment, giving the apartment as his address for that purpose. Finally, an envelope hidden inside a VCR in the apartment, containing a substantial sum of money, bore the names of both defendant and his girlfriend, along with a statement about their romantic attachment. The prosecutor introduced

additional evidence linking defendant to the apartment, but when considered in the light most favorable to the prosecution, the above evidence alone was sufficient to establish defendant's constructive possession of the crack cocaine.

Against all this, defendant argues that the evidence also supported an inference that others had access to the apartment, meaning that defendant could not have been in constructive control of the apartment or of the crack cocaine. It is true that some evidence supported such an inference. However, once a jury verdict is rendered, this Court's role is not to seek those inferences that may be drawn contrary to the jury verdict. Rather, this Court's role is to determine whether the jury verdict can be supported, viewing the jury verdict in the light of every reasonable inference. *Nowack, supra*, 399-400. It is clear that inferences can be reasonably drawn from the evidence supporting the jury verdict, and so the verdict must be affirmed, even if opposite inferences could arguably also have been drawn. In addition, there were contradictions in the testimony on this issue, and we are required to resolve credibility issues in such a way as to support the jury verdict. *Id.* at 400. This last point is especially significant when we consider that the witness on whose testimony defendant chiefly relies for his theory rendered an extremely contradictory account. We cannot say that the jury was not entitled to make a credibility determination giving less weight to those portions of her testimony which did favor defendant than it gave to the testimony of other witnesses.

We therefore conclude that the prosecutor introduced sufficient evidence, when reviewed under the applicable standard, to establish defendant's constructive possession of the crack cocaine. Given that defendant does not challenge the sufficiency of the evidence as to the other elements of the crime, it follows that the evidence was sufficient to support defendant's conviction.

Defendant also argues that the trial court improperly admitted evidence that defendant offered to bribe the arresting police officer. We review claims of error with respect to admission of evidence for abuse of discretion. *Roulston v Tendercare (Michigan), Inc.*, 239 Mich App 270, 282; 608 NW2d 525 (2000). Here, we find no abuse of discretion.

It is well accepted in Michigan that evidence showing a defendant's "guilty consciousness," such as evidence of flight to avoid arrest, procuring perjured testimony, and attempts to destroy evidence, is admissible. *People v Hooper*, 50 Mich App 186, 199; 212 NW2d 786 (1973). There is no question that an attempt to bribe a police officer to drop charges fits into this category, being most analogous to an attempt to destroy evidence.

Defendant argues, however, that the bribery evidence should be excluded on the basis of two exceptions to this rule, which he notes have not been explicitly adopted by the Michigan courts. Nevertheless, defendant suggests that these exceptions are consistent with the reasoning of our cases, and ought to be adopted as the law of this state. The first exception limits admission of evidence of acts manifesting a guilty consciousness to circumstances in which the defendant was aware of the charges against him at the time the act was committed. The second exception bars admission of such evidence when there were multiple causes that could have caused the guilty consciousness. Defendant argues that both exceptions apply here, because the cocaine charges had not yet been brought when the bribe attempt was made, and because defendant had already been arrested on other charges, including possession of marijuana.

With respect to this issue, we note that the exceptions to which defendant points have not been adopted in Michigan. Further, these exceptions seem to have been adopted in circumstances involving flight from authorities. The rationale of these cases is that, given the human psychological tendency to flee apparent danger, great care must be taken to ensure that evidence that is not really evidence of guilty consciousness of the charged offense is not unfairly introduced. That rationale does not require the same circumspection in admitting evidence of bribes. If we were required to resolve the issue, we would not adopt the exceptions defendant cites from the other jurisdictions, at least not in cases where guilty consciousness is demonstrated by the offering of a bribe. However, we are not required to resolve this question, and decline to do so, as our decision on this issue can be supported by two independent reasons.

Assuming *arguendo* that the cited exceptions ought to be applied, we cannot find that the trial court abused its discretion in finding them inapplicable here. The clear evidence was that defendant knew he was charged with possession of marijuana for a long time before the subject of a bribe came up. In fact, defendant offered the bribe only when the subject of the apartment, in which the crack cocaine was kept, arose. The arresting officer testified that defendant also made statements indicating to the officer, a trained drug specialist, that defendant dealt in crack cocaine. There were other circumstances as well, suggesting that the bribe offer stemmed from the fear of discovery of the crack cocaine and the money made from its sale. For example, defendant was willing to pay what proved to be a substantial percentage of the drug sale money, but was very reluctant to pay a sum representing almost the entirety of it, lest he be “wiped out.” Further, defendant wanted to pay the bribe not at or near the police station itself or some neutral location, but at the apartment in which the crack cocaine and the proceeds from its sale were kept. Considering the entirety of these circumstances, we cannot say that the trial court abused its discretion in finding that the bribe offer demonstrated guilty consciousness with respect to possession of crack cocaine with intent to distribute it.

Moreover, as preserved nonconstitutional error, any hypothetical error the trial court may have made on this issue is a ground for reversal only if it was more probably than not outcome determinative. *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999). As we have already noted, there was more than sufficient evidence to establish defendant’s guilt beyond a reasonable doubt, without even considering this evidence. Therefore, we find no error in the trial court’s admission of this evidence, or in the jury instruction regarding this evidence.

Finally, defendant argues that the trial court erred in admitting what defendant views as drug dealer profile evidence that the practice of using “nominees” to hold record title to assets is common among drug dealers, and that drug dealing is a cash business. However, this evidence was submitted in a way that comports with the standards we have established for the admission of drug dealer profile evidence. As we held in *People v Murray*, 234 Mich App 46, 53; 593 NW2d 690 (1999), “a prosecutor may use expert testimony from police officers to aid the jury in understanding evidence in controlled substance cases.” We also held that an expert may testify that a defendant “acted in accordance with usual criminal *modus operandi*” and may explain “the typical characteristics of drug dealing,” as long he does not offer an opinion that the defendant is guilty merely because he fits a drug profile. *Id.* at 54 (citation omitted).

In the present case, a qualified expert offered opinion testimony in order to provide the trier of fact a better understanding of the evidence from the viewpoint of a recognized discipline. Further, the evidence was offered to explain the typical criminal mode of operating and to

explain drug dealer practices. The evidence was not accompanied by the opinion that defendant was guilty because he met a profile. Therefore, under *Murray*, the evidence was admissible. Like the expert, the prosecutor merely argued that defendant acted in accordance with a standard criminal procedure. The prosecutor did not, as defendant claims, make the impermissible suggestion that defendant was guilty because he met a drug profile.

Moreover, any error in the admission of this evidence would also constitute preserved nonconstitutional error, and therefore would represent a ground for reversal only if it was more probably than not outcome determinative. *Lukity, supra* at 495-496. Because there was more than sufficient evidence to establish defendant's guilt beyond a reasonable doubt without even considering this evidence, we find no error warranting reversal in the trial court's admission of the evidence, or in the fact that it gave no specific instruction as to how to consider it.

Affirmed.

/s/ Peter D. O'Connell

/s/ David H. Sawyer

/s/ Michael R. Smolenski