STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 9, 2002
v	No. 227623 Oakland Circuit Court
VERNON LEROY BOLLING, Defendant-Appellant.	LC No. 94-132608-FH

Before: Markey, P.J., and Talbot and Zahra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv). He was sentenced to fourteen months to twenty years' imprisonment. He appeals by right. We affirm.

Defendant claims that the trial court erred in allowing Detective Marty Bugbee to provide opinion testimony regarding telephone messages for defendant that were found at codefendant Greg Crouch's residence. Detective Bugbee testified that the fact that messages were found at the residence led him to conclude that defendant was residing with Crouch. The trial court did not abuse its discretion in admitting this testimony. *People v Christel*, 449 Mich 578, 587; 537 NW2d 194 (1995). Even if Detective Bugbee's testimony were not admissible under MRE 702, it was admissible under MRE 701. In general, police officers may provide lay opinions about matters that are not overly dependent on scientific, technical, or specialized knowledge. *People v Oliver*, 170 Mich App 38, 49-50; 427 NW2d 898 (1988), modified on other grounds 433 Mich 862 (1989). Here, Detective Bugbee's testimony regarding an inference that could be drawn from the fact that there were telephone messages for defendant found at Crouch's house was not dependent on technical or specialized knowledge. However, the officer's observations helped provide the jurors with a "clear understanding" of his testimony and helped the jury determine "a fact in issue" regarding whether defendant possessed the cocaine found on the premises. MRE 701. Therefore, Detective Bugbee's testimony was admissible as opinion testimony by a lay witness under MRE 701.

Even if Detective Bugbee's testimony were inadmissible, however, the error would have been harmless in light of the other substantial evidence indicating that defendant was residing at Crouch's house, including defendant's own admission to police that he was living at the Crouch residence, at least part-time. Moreover, following defense counsel's objection to Detective Bugbee's testimony, the jury was instructed to give the testimony whatever weight they believed

it merited. Under these circumstances, any error in the admission of Detective Bugbee's testimony was harmless.

Defendant also claims that Officer Michael Farley provided improper "drug profile" testimony. Officer Farley's opinion testimony that the cocaine found in defendant's jacket pocket was packaged for delivery, not personal use, was not improper drug profile evidence. Moreover, his testimony that the scale found in defendant's bedroom was a "quality scale" and "very accurate," and that it was likely used to weigh cocaine "in small, gram and a half portions and [place it] into the packaging material . . . for distribution," was not drug profile evidence. This testimony did not relate to characteristics of a typical person engaged in specific illegal activity. *People v Murray*, 234 Mich App 46, 52; 593 NW2d 690 (1999). The testimony was elicited from Officer Farley, an expert in drug trafficking, to aid the jury in understanding evidence relating to how drugs are packaged for delivery or sale. Whether the cocaine was for personal use or intended for delivery was a pivotal issue in this case. Moreover, how illegal drugs are packaged for distribution is not within the knowledge of a layperson. The purpose of Officer Farley's testimony was to aid the jury in resolving the delivery issue. A prosecutor may use expert testimony from a police officer to aid the jury in understanding evidence in controlled substances cases. *People v Ray*, 191 Mich App 706, 707; 479 NW2d 1 (1991); see, also, *Murray*, *supra* at 53.

To the extent that testimony relating to pagers and large amounts of cash was improper drug profile evidence, *Murray*, *supra* at 52-53, reversal is unwarranted. Defense counsel did not object to the introduction of this evidence at trial. Unpreserved claims of error are reviewed under the "plain error rule." *People v Carines*, 460 Mich 750, 763-767, 774; 597 NW2d 130 (1999). In order to avoid forfeiture under the plain error rule, a defendant must show that: (1) an error occurred; (2) the error was plain, i.e., clear or obvious; and (3) the plain error affected substantial rights. *Id*. at 763. Establishing that the plain error affected substantial rights requires a showing of prejudice such that the error affected the outcome of the lower court proceedings. *Id*. Even conceding that the admission of the drug profile evidence constituted plain error, defendant cannot establish that he was prejudiced to the extent that the error affected the outcome of the proceeding. Although the circumstantial evidence tending to prove that defendant possessed and intended to deliver less than fifty grams of cocaine may not have been overwhelming, we do not believe that Officer Farley's testimony that "pagers are commonly used for individuals to be summoned for a delivery" and that "large sums of money" and "cash on hand" were associated with drug transactions, affected the outcome of the trial. The evidence indicated that defendant resided, at least part-time, with Crouch and that there was a "cocaine processing lab" on the premises. Although denying that he possessed any of the cocaine, defendant admitted that he knew that Crouch sold cocaine. Cocaine and an expensive scale (which was covered with cocaine residue) were found in defendant's bedroom. The cocaine, packaged for delivery, was found in defendant's jacket pocket. Defendant's thumbprint was found on one of the packages containing cocaine. Under these circumstances, any error in the admission of Officer Farley's testimony was harmless. Moreover, it does not appear that defendant is actually innocent of the charged offense, or that any error seriously affected the fairness, integrity or public reputation of the instant judicial proceedings. Therefore, reversal is not required on the basis of this unpreserved issue. *Carines*, *supra* at 763-764.

Next, we reject defendant's claim that the trial court erred in refusing to instruct the jury with regard to CJI2d 8.5, the jury instruction relating to "mere presence." CJI2d 8.5 is included in the cluster of Michigan Criminal Jury Instructions that include the instruction on aiding and abetting. CJI2d 8.1. See also CJI2d 8.4. The clear and unambiguous language of CJI2d 8.5 indicates that the instruction applies when the prosecutor's theory is aiding and abetting, i.e., that the defendant intentionally assisted someone else in committing a crime. Here, the prosecutor's theory was not aiding and abetting; therefore, defendant was not entitled to the "mere presence" jury instruction.

Furthermore, the instructions given in this case fairly presented the issues to be tried and sufficiently protected defendant's rights. *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000). With regard to defendant's theory that although he knew there was cocaine in Crouch's house, the cocaine belonged to Crouch and he was merely staying at Crouch's house, the jury was instructed that "It's not enough if the Defendant merely knew about the cocaine. The Defendant possessed the cocaine only if he had control of it or the right to control it either alone or with someone else. That's the definition of possession." This instruction, combined with defense counsel remarks during closing argument that "knowing that there's cocaine in a house is not in and of itself a crime" and that it is not against the law to be present in a place where cocaine is found, sufficiently apprised the jury of defendant's theory and the applicable law relating to possession of cocaine. Defendant was not denied his right to a properly instructed jury.

Next, defendant claims that remarks made by the prosecutor during closing argument regarding codefendant Greg Crouch denied him a fair trial. We disagree. Considered in context, the prosecutor's remarks were made in response to comments defense counsel made during closing argument, so they were not improper. *People v Duncan*, 402 Mich 1, 16 (Ryan, J.); 260 NW2d 58 (1977); *People v Kennebrew*, 220 Mich App 601, 608; 560 NW2d 354 (1996).

Lastly, the trial judge did not abuse his discretion in refusing to allow defendant to testify that he had no prior criminal history. Defendant has suggested no other purpose for this testimony other than to bolster his credibility. This Court has previously held that evidence of the lack of a criminal record is not admissible to prove honesty or bolster the credibility of a witness. *People v Griffin*, 235 Mich App 27, 46; 597 NW2d 176 (1999); *People v Phillips*, 170 Mich App 675, 680-681; 428 NW2d 739 (1988). Thus, the trial judge properly excluded defendant's testimony regarding his lack of criminal history. Defendant's reliance on *People v Huff*, 101 Mich App 232; 300 NW2d 525 (1980), rev'd on other grds 411 Mich 974 (1981), is misplaced. The instant case is distinguishable from *Huff*. Here, the prosecutor did not attempt to impeach defendant by telling the jury of the existence of unnamed prior felony convictions. In this case, it was defendant who wanted to provide testimony that he had no prior criminal history. Under these circumstances, the lack of a criminal record is not admissible to prove honesty or bolster the credibility of a witness. *Griffin, supra* at 46; *Phillips, supra* at 680-681.

We affirm.

/s/ Jane E. Markey
/s/ Michael J. Talbot
/s/ Brian K. Zahra