

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN LEWIS ANDERSON, JR.,

Defendant-Appellant.

UNPUBLISHED

July 23, 1996

No. 183594

LC No. 94-8257

Before: Doctoroff, C.J., and Wahls and Smolenski, JJ.

PER CURIAM.

Defendant was convicted by a jury of delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). He then pleaded guilty to being an habitual offender, second offense. MCL 769.10; MSA 28.1082. Defendant was sentenced to five to thirty years' imprisonment. He appeals as of right. We affirm.

I

Defendant argues that it was error to deny defendant's motion for mistrial based on the prosecutor's question to the investigating officer regarding the source of a photograph used in a photo array shown to the confidential informant. We disagree. Our review of the record leads us to believe that the prosecutor's question, though improper, was not unduly prejudicial and did not deny defendant the right to a fair trial. The trial court did not abuse its discretion in denying defendant's motion for mistrial. *People v Paquette*, 214 Mich App 336, 341-342; 543 NW2d 342 (1995); *People v McAlister*, 203 Mich App 495, 504; 513 NW2d 431 (1994).

Defendant also insists that he is entitled to a new trial because the prosecutor's question constitutes misconduct necessitating reversal. We disagree. Although the prosecutor's conduct in the present case is not to be condoned, we are satisfied that defendant was not denied the right to a fair trial. *People v Lawton*, 196 Mich App 341, 353; 492 NW2d 810 (1992).

II

Defendant next argues that error requiring reversal occurred when the investigating officer testified, over defendant's hearsay objection, that he learned through an unnamed source that defendant used the same street name "Giz," the same name used by the man who sold cocaine to the confidential informant. We will not reverse a trial court's decision to admit evidence absent an abuse of discretion. *People v Coleman*, 210 Mich App 1,4; 532 NW2d 885 (1995).

Although the challenged testimony was hearsay, we deem the erroneous admission of the testimony harmless because it is merely cumulative to the confidential informant's unequivocal testimony that defendant was the person who identified himself as "Giz." *City of Westland v Okopski*, 208 Mich App 66, 77-78; 527 NW2d 780 (1994); *People v Slaton*, 135 Mich App 328, 338; 354 NW2d 326 (1984). Defendant has failed to demonstrate error requiring reversal.

III

Defendant argues that his five-year minimum sentence is disproportionate. We disagree. As an habitual offender, defendant could have received a sentence of up to thirty years. MCL 769.10; MSA 28.1082. As noted by the trial court, defendant's juvenile record includes a possession of cocaine charge, his adult record includes two felony convictions, and defendant was on probation for a drug-related offense when he committed the instant offense. Despite prior lenient treatment, defendant has refused to refrain from committing drug-related offenses. The five-year minimum sentence imposed by the trial court is proportionate and does not constitute an abuse of discretion.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Myron H. Wahls

/s/ Michael R. Smolenski