

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT FRANCIS HANLEY,

Defendant-Appellant.

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UNPUBLISHED  
October 26, 1999

No. 210361  
Delta Circuit Court  
LC No. 97-006165 FH

Before: Griffin, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Defendant appeals of right from his jury conviction of conspiracy to deliver lysergic acid diethylamide (LSD), MCL 750.157a; MSA 28.354(1) and MCL 333.7401(2)(b); MSA 14.15(7401)(2)(b). The trial court sentenced defendant as a habitual offender to five to ten and one-half years' imprisonment. We affirm.

Defendant first contends that the testimony of several prosecution witnesses was inadmissible because it resulted from improper promises of leniency or other inducements. Because defendant did not raise this issue in the trial court, we will review it only for plain error. *People v Grant*, 445 Mich 535, 552-553; 520 NW2d 123 (1994). A plain, unpreserved error may not be considered by an appellate court for the first time on appeal unless the error could have been decisive of the outcome or unless it falls under the category of cases where prejudice is presumed or reversal is automatic.

Defendant's argument is premised on a federal case that interprets a federal statute, *United States v Singleton*, 144 F3d 1343 (CA 10, 1998); 18 USC 201(c)(2). That case has been overruled by an en banc panel, *United States v Singleton*, 165 F3d 1297 (CA 10, 1999), and the federal statute is inapplicable both because it does not govern state prosecutors and because the overruling *Singleton* decision held that the statute did not restrict the ability of federal prosecutors to offer leniency deals to witnesses in return for their testimony.

Defendant argues that MCL 775.7; MSA 28.1244 performs the same function in this state that the initial panel in *Singleton* concluded was performed by the federal statute – precluding the prosecutor from offering anything of value to a witness in exchange for testimony. However, as the

prosecutor points out on appeal, MCL 775.7; MSA 28.1244 by its plain terms provides the means for a prosecutor to obtain reasonable payment for a witness' *expenses*. When interpreting a statute, a reviewing court must give words their common, generally accepted meanings and if "the plain and ordinary meaning of the language is clear, judicial construction is normally neither permitted nor necessary." *People v Fox (After Remand)*, 232 Mich App 541, 553; 591 NW2d 384 (1998). The statute authorizes payment of "expenses" and precludes the prosecutor from paying any other "fees." Neither of these terms implies that the statute forbids leniency agreements such as the dropping of other outstanding charges, or the reduction of a sentence in return for the witness' testimony. Thus, the statute by its terms does not apply to leniency agreements and defendant's suggested interpretation must be rejected.

Defendant contends that the prosecutor violated MRPC 3.4(b). That rule provides that a lawyer is not to "offer an inducement to a witness *that is prohibited by law*." (Emphasis supplied.) The Tenth Circuit made clear in *Singleton, supra* at 1301, that "From the common law, we have drawn a long-standing practice sanctioning the testimony of accomplices against their confederates in exchange for leniency." Our Supreme Court has long held that, upon defense request, leniency agreements extended by the prosecutor to an accomplice or co-conspirator must be disclosed by the prosecutor to the jury. *People v Atkins*, 397 Mich 163, 173; 243 NW2d 292 (1976). Thus, the prosecutor's offer of inducements in the form of leniency regarding pending or potential charges or sentences was not "prohibited by law" and therefore did not contravene MRPC 3.4(b).

Defendant next contends that the trial court abused its discretion by failing to grant his motion for a mistrial after a witness testified that defendant served time in prison. This Court reviews the trial court's decision regarding a request for a mistrial for an abuse of discretion. *People v Haywood*, 209 Mich App 217, 228; 530 NW2d 497 (1995). A mistrial should be granted only for an irregularity that is prejudicial to the rights of the defendant, and impairs his ability to get a fair trial. *Id.* Although evidence of a defendant's prior conviction may be prejudicial because of the danger that the jury may use such evidence improperly to focus on the defendant's bad character, revelation of a prior conviction resulting from a volunteered or unresponsive answer to a proper question is not grounds for a mistrial. *People v Griffin*, 235 Mich App 27, 36; 597 NW2d 176 (1999). Here, defendant conceded at trial that the witness' answer was volunteered and unresponsive to the prosecutor's question. We also note that the reference was very brief, it did not refer to defendant by name, and the prosecutor did not mention this evidence in closing argument. Furthermore, defendant declined the trial court's offer of a curative instruction. We conclude that the trial court properly denied the motion for a mistrial.

Defendant next contends that the trial court erred by refusing a request to instruct the jury using CJI2d 5.7, and to change the instruction on delivery by using "co-conspirator" rather than the phrase "someone who delivers." Defendant also contends that the trial court erred by instructing the jurors that they should disregard the order in which the possible verdicts were listed on the verdict form because that instruction implied that the trial court thought defendant was guilty. Defendant raised these claims in the trial court and this Court reviews preserved claims of instructional error de novo, *People v Hammond (After Remand)*, 217 Mich App 459, 487; 552 NW2d 493 (1996), by considering jury instructions in their entirety to determine if there is error requiring reversal. *People v McFall*, 224 Mich

App 403, 412; 569 NW2d 828 (1997). Even if the instructions are imperfect, there is no error if they fairly presented the issues to be tried and sufficiently protected the defendant's rights. *People v Daniel*, 207 Mich App 47, 53; 523 NW2d 830 (1994).

The "addict informer" instruction, CJI2d 5.7, should be given where the testimony of the informant is the only evidence linking the defendant to the offense. *Griffin, supra* at 40. In this case, there was testimony from several witnesses other than the alleged addict concerning defendant's involvement in deliveries of LSD. Furthermore, it was never established that the informant was an addict. Therefore, we conclude that the trial court did not abuse its discretion in deciding that the addict informant instruction was not appropriate.

Defendant has presented no argument or authority in support of his second claim of instructional error – that the trial court erred in explaining the elements of delivery of a controlled substance in the context of this case by failing to use the term "co-conspirator" rather than "someone." A claim that is merely stated without citation of authority or argument is considered abandoned. *People v Kent*, 194 Mich App 206, 210; 486 NW2d 110 (1992); *People v Roberson*, 167 Mich App 501, 519; 423 NW2d 245 (1988). Even if reviewed to prevent a miscarriage of justice, this claim is without merit. The conspiracy instructions provide that the prosecutor must prove "that the defendant and *someone else* knowingly agreed to commit the offense of delivery of . . . LSD." The use of the word "someone" in the instruction regarding the actual delivery would suggest to the jury that the someone who agreed to commit the offense with defendant and the someone who actually delivered the controlled substance were references to the same person. Substitution of the term "co-conspirator" would not have made the instruction any clearer. Thus, because the instructions considered as a whole properly stated the law, there is no basis upon which to reverse defendant's conviction.

Defendant's final claim of instructional error likewise is not supported with any argument or citation of authority and is therefore abandoned. *Kent, supra* at 210; *Roberson, supra* at 519. Even if considered, this claim does not demonstrate manifest injustice because the trial court's admonition to the jury to disregard the order of the possible verdicts on the verdict form cannot be taken to indicate that the court was subtly transmitting its own view of the case to the jurors. Defendant's argument requires this Court to conclude that the jurors would interpret the court's instruction to attach no significance to the order of the possible verdicts as a suggestion that they, in fact, attach significance to the order. Because jurors are presumed to follow a court's instructions, *People v Reed*, 449 Mich 375, 401; 535 NW2d 496 (1995), this argument is untenable.

Defendant next argues that there was insufficient evidence to support his conviction. This Court reviews a claim that the evidence was insufficient to support a defendant's conviction by considering the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). Defendant does not argue that there was no conspiracy to deliver LSD; rather, he argues that there was insufficient evidence to establish that he was involved in the conspiracy. In *People v Justice (After Remand)*, 454 Mich 334, 347; 562 NW2d 652 (1997), our Supreme Court observed that because it is often difficult to identify the participants in a criminal conspiracy, direct proof of the conspiracy is not required and

sufficient proof “may be derived from the circumstances, acts, and conduct of the parties.” In this case, two witnesses testified that they either bought or obtained LSD in trade from defendant and his girl friend. Two other witnesses testified that they obtained LSD from defendant’s girl friend, and they also related statements made by defendant that, interpreted in a light most favorable to the prosecution, indicated defendant’s knowledge of, and participation in, these deliveries of LSD. Several witnesses also testified concerning threats that defendant made after his girl friend was arrested; such statements may be considered as conduct evidencing a defendant’s consciousness of guilt. *People v Sholl*, 453 Mich 730, 740; 556 NW2d 851 (1996). We conclude that there was sufficient evidence to support defendant’s conviction.

Although defendant also contends that his conviction was against the great weight of the evidence, he failed to preserve this claim by moving for a new trial. *People v Winters*, 225 Mich App 718, 729; 571 NW2d 764 (1997). We review this unpreserved claim for plain error, *Grant, supra* at 544-547, and we conclude that, as we noted above regarding defendant’s sufficiency of the evidence claim, the clear weight of the evidence established defendant’s guilt. *People v DeLisle*, 202 Mich App 658, 661; 509 NW2d 885 (1993).

Defendant next claims that the cumulative effect of the above errors deprived him of a fair trial and therefore requires reversal of his conviction. Defendant has failed to establish error with respect to any of the claims he presents on appeal. Therefore, the cumulative effect of these meritless claims cannot establish error requiring reversal. *People v Maleski*, 220 Mich App 518, 525; 560 NW2d 71 (1996).

Defendant also raises four issues in a brief filed in propria persona. None of these claims require reversal of his conviction. Regarding defendant’s argument that the trial court improperly allowed the prosecutor to present testimony concerning alleged threats made after the conspiracy had ended, the trial court did not abuse its discretion by admitting this testimony, *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998), because threats to a witness constitute evidence showing defendant’s consciousness of guilt, *Sholl, supra* at 740, and they were not hearsay because they were defendant’s statements. MRE 802(d)(2)(A).

Defendant also contends that it was an abuse of the trial court’s discretion to admit testimony regarding the attempted purchase of cocaine and marijuana by defendant’s girl friend. This testimony was properly admitted because it completed the picture of the drug conspiracy in which defendant participated and provided an explanation for the arrest of defendant’s girl friend as well as for defendant’s subsequent threatening behavior. Such testimony may be admitted even where it involves the disclosure of other crimes. *Sholl, supra* at 741-742; *People v Delgado*, 404 Mich 76, 83; 273 NW2d 395 (1978).

Defendant next argues that the trial court denied a proper jury instruction; however, defendant does not indicate what jury instruction should have been given and fails to demonstrate that he requested an instruction. This issue is therefore not preserved because defendant did not request the instruction, *People v Kelly*, 423 Mich 261, 271-272; 378 NW2d 365 (1985), and because defendant has failed to present any argument or authority in support of his position. *People v Leonard*, 224 Mich App 569,

588; 569 NW2d 663 (1997). To the extent that defendant's argument simply repeats claims he raised in other issues, this issue is not preserved because defendant has failed to set forth his claim in his statement of questions presented. *City of Lansing v Hartsuff*, 213 Mich App 338, 351; 539 NW2d 781 (1995).

Defendant finally contends that he is entitled to a new trial, or at least to a remand for an evidentiary hearing, on the basis of newly discovered evidence. This claim is not preserved for appellate review because defendant failed to make a motion for a new trial and did not move for a remand for an evidentiary hearing to make a record providing support for this claim. MCR 6.431(B); *People v Torres (On Remand)*, 222 Mich App 411, 415; 564 NW2d 149 (1997). Defendant has failed to present any evidence in support of his allegations and thus a remand for an evidentiary hearing is not appropriate. Moreover, with reasonable diligence, defendant could have discovered the technical capabilities of the recording system used by the police to monitor their informant. Therefore, this alleged evidence is not newly discovered. *People v Davis*, 199 Mich App 502, 515; 503 NW2d 457 (1993).

Affirmed.

/s/ Richard Allen Griffin  
/s/ David H. Sawyer  
/s/ Michael R. Smolenski