STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEWAYNE HILL,

Defendant-Appellant.

UNPUBLISHED
April 16, 1996

No. 175072
LC No. 94-36599-FH

Before: O'Connell, P.J., and Reilly and D. E. Shelton,* JJ.

PER CURIAM.

Defendant was convicted by jury of two counts of delivery of less than fifty grams of cocaine in contravention of MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). He was sentenced pursuant to MCL 333.7413(2); MSA 14.15(7413)(2), to consecutive prison terms of three to forty years. He now appeals as of right, and we affirm.

Contrary to defendant's contention, the evidence was sufficient to support his convictions. Viewing the evidence in the light most favorable to the prosecution, *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994), a reasonable finder of fact could have concluded that the prosecution presented sufficient evidence to prove beyond a reasonable doubt all of the elements of delivery of cocaine. See *People v Wolfe*, 440 Mich 508, 516-517; 489 NW2d 748 (1992). Defendant's actions in facilitating the sales of cocaine supported, encouraged or incited the commission of the crimes, which is sufficient to support a conviction under an "aiding and abetting" theory. *People v* Usher, 121 Mich App 345, 350; 328 NW2d 628 (1982), citing People *v Palmer*, 392 Mich 370; 220 NW2d 693 (1974).

Defendant next argues that he was denied his right to a fair trial where the prosecution violated MRE 404(b) by questioning defendant concerning prior bad acts. However, MRE 404(b) pertains only to the introduction of evidence concerning prior bad acts, as opposed to questioning concerning prior

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

bad acts. Here, the prosecution twice asked defendant whether he had ever purchased drugs before, and defendant twice denied having purchased drugs in the past. Because no evidence of prior bad acts was introduced, MRE 404(b) is not implicated.

Defendant next submits that prosecutorial misconduct deprived him of his right to a fair trial. However, because defendant failed to object to the alleged instances of prosecutorial misconduct below, thereby depriving the trial court of its opportunity to issue curative instructions, our review is limited to consideration whether manifest injustice has resulted. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1995). We find none. Defendant claims in the alternative that his counsel's failure to lodge objections to the alleged misconduct constituted ineffective assistance of counsel. Because defendant has not "show[n] that there is a reasonable probability that, but for counsel's [alleged] unprofessional errors, the result of the proceeding would have been different," *People v Pickens*, 446 Mich 298, 314; 521 NW2d 797 (1994), quoting *Strickland v Washington*, 466 US 668, 694; 104 S Ct 2052; 80 L Ed 2d 674 (1984), we decline to find that his representation was ineffective.

Defendant also alleges, in effect, that the unintended introduction of evidence pertaining to a prior arrest deprived him of his right to a fair trial. The court allowed the jury to submit questions to the witnesses, and while responding to one of these juror-submitted questions, a witness stated that "we had prior information on Mr. Hill at our office from [a] prior arrest."

Obviously, this evidence should not have been admitted because it was not relevant in proving any fact in dispute, MRE 402,[1] and the court properly sustained counsel's prompt objection. However, "[w]hen a witness, for any reason gives an irresponsive answer and which is not competent evidence, and the answer is suppressed at once, the case must be a very peculiar and very strong one which would justify a reversal for such fault or mistake of the witness." *People v Page*, 41 Mich App 99, 101; 199 NW2d 669 (1972), quoting *People v Tutha*, 276 Mich 387, 393; 267 NW 867 (1936), in turn quoting *Hill v Robinson*, 23 Mich 24 (1871) (emphasis removed). Here, the error was immediately brought to the attention of the jury and a curative instruction was later given. Defendant has suggested no reason why this case should be considered "very peculiar," and we have found none. Therefore, we fail to find that defendant's right to a fair trial was impinged.

Next, defendant contends that the sentencing court erred in imposing consecutive rather than concurrent sentences. Specifically emphasizing the "another felony" language of the relevant consecutive sentencing provision, defendant argues that "[t]he controlled substances act does not authorize consecutive sentencing on two controlled substance offenses." Our Supreme Court, however, has recently stated that the statute in issue does, in fact, authorize consecutive sentencing in such a situation. *People v Morris*, 450 Mich 316, 324-333; 537 NW2d 842 (1995).

Finally, defendant argues that the sentencing court "had a personal bias against drug offenders," and, because of this, failed to impose an individualized sentence. We have reviewed the record and are forced to conclude that defendant confuses the strong language used by the court with personal bias. As stated in *People v Antoine*, 194 Mich App 189, 191; 486 NW2d 92 (1992), the language used by

a court when imposing sentence need not be tepid. Certain actions may, in the view of society, warrant sharp criticism, and the voicing of such criticism is not tantamount to personal bias. Therefore, we find no abuse of discretion with respect to the individualized nature of defendant's sentence. See *People v Chapa*, 407 Mich 309, 311; 284 NW2d 340 (1979).

Affirmed.

/s/ Peter D. O'Connell
/s/ Maureen Pulte Reilly
/s/ Donald E. Shelton

[1] MRE 609, Impeachment by Evidence of Conviction of Crime, is not implicated because no reference to any conviction was made, but merely to an arrest. Therefore, we believe that the statement in issue is properly analyzed strictly in terms of its relevancy.