

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DOUGLAS PAUL GREENMAN,

Defendant-Appellant.

UNPUBLISHED
November 5, 2009

No. 286060
Tuscola Circuit Court
LC No. 07-010451-FH

Before: Davis, P.J., and Whitbeck and Shapiro, JJ.

SHAPIRO, J. (*concurring*).

I concur in the result, but do not agree with the majority's analysis on two issues.

First, I believe the trial court erred by excluding those portions of defendant's on-scene statements to the police that defendant wished to introduce. While such statements are hearsay, they should be admitted under the "rule of completeness" where the prosecution has admitted selected portions of those statements. As held in *People v Willis*, 477 Mich 877; 721 NW2d 597 (2006), in certain factual settings, it violates a defendant's "due process right to a fair trial when the circuit court refuse[s] to admit the complete statement the defendant made to the first police officer at the scene" after admission of a portion of that statement. I conclude that the trial court's refusal to do so constituted error. However, after a review of the entire trial transcript, I conclude that the error was harmless. The only testimony that defendant sought to admit was that he had told the officers that the cocaine was not his. However, defendant testified to the jury that the cocaine and paraphernalia were not his and that contrary to the police officer's testimony he never made the statement that he used cocaine for medicinal purposes. Therefore, the substance of the testimony that defendant wanted admitted was before the jury to consider.

Second, I do not agree that the testimony that the police received anonymous tips that defendant was a drug dealer was admissible. The gravamen of the prosecution's case was that they found cocaine in defendant's shirt pocket and on a table at which he was sitting after he let them in his home and consented to a search. Neither the prosecution's case nor the credibility of the officers' testimony depended upon an explanation of why the police came to suspect him. Further, the testimony regarding the anonymous tips was highly prejudicial in that it constituted evidence of criminal activity by unnamed hearsay sources and its admission violated the Confrontation Clause. US Const, Am VI; Const 1963, art I, § 20; *People v Wilkins*, 408 Mich 69, 72-74; 288 NW2d 583 (1980); *People v Harris*, 41 Mich App 389, 392; 200 NW2d 349

(1972). However, since the jury acquitted defendant of possession with intent to deliver, the error was harmless. *People v Hoffman*, 154 Mich 145, 148; 117 NW 568 (1908); *People v Reed*, 67 Mich App 229, 236; 240 NW2d 492 (1976).

/s/ Douglas B. Shapiro