

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM JAMES GODBOLT, JR.,

Defendant-Appellant.

UNPUBLISHED

July 11, 1997

No. 187487

Calhoun Circuit Court

LC No. 95-000072-FH

Before: Reilly, P.J., and Hood and Murphy, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession with intent to deliver less than fifty grams of a mixture containing cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to ten to twenty years' imprisonment for the drug conviction and two years' consecutive imprisonment for the felony-firearm conviction. He appeals as of right. We remand for the trial court to interview two informants in camera pursuant to *People v Underwood*, 447 Mich 695; 526 NW2d 903 (1994), after remand 449 Mich 871 (1995).

The Court finds the reason given by the prosecution for failing to give pretrial notice of its intent to introduce other acts evidence pursuant to MRE 404(b) was not sufficient to constitute good cause. *People v Travis*, 443 Mich 668, 684; 505 NW2d 563 (1993). Thus, the trial court abused its discretion in finding good cause for the delay. *Id.* at 681. However, the error was harmless because defendant was not denied a fair trial or otherwise prejudiced by the delay. *People v Ullah*, 216 Mich App 669, 676; 550 NW2d 568 (1996). The other acts evidence was properly admitted pursuant to MRE 404(b) because it suggested the existence of a system for operating the alleged drug houses and defendant's participation in it, thus refuting defendant's claim that he was merely present at the scene at the time of the raid. *People v VanderVliet*, 444 Mich 52, 69-70; 508 NW2d 114 (1993). The trial court did not abuse its discretion in denying defendant's motion for a continuance. *City of Lansing v Hartsuff*, 213 Mich App 338, 350-351; 539 NW2d 781 (1995).

However, we agree with defendant that he demonstrated “a possible need” for the testimony of the informants who supplied the information to obtain the search warrants. *Underwood, supra*. These informants’ testimony would either support or discredit the prosecution’s theory that there was a system of operating the alleged drug houses and that defendant participated in the distribution of drugs according to that system. Therefore, the trial court should have conducted a hearing in camera to determine whether the informants’ testimony is either relevant and helpful to the defense or essential to a fair determination of defendant’s guilt. *Id.* The appropriate remedy in this case is the same as in *Underwood*. On remand, the trial court should interview the informants in camera to determine whether the information the informants can provide is “either relevant and helpful to defendant’s defense or essential to a fair determination of defendant’s guilt.” *Id.* at 709. “If the trial judge finds that the informant[s] could offer no testimony relevant or helpful to the defense, or that such testimony is relevant but inadmissible, defendant’s conviction shall be affirmed. If the finding is otherwise, the trial court shall determine whether defendant is entitled to a new trial.” *Id.* at 709-710. We caution the court to take appropriate measures to protect the identities of these informants.

With respect to defendant’s sentence, the trial court did not err in deciding not to delete dismissed juvenile adjudications from the presentence investigation report. MCR 6.425(A)(1); MCL 771.14(5); MSA 28.1144(5); *People v Parr*, 197 Mich App 41, 46; 494 NW2d 768 (1992).

Remanded for an in camera hearing forthwith. The trial court shall make findings of fact and a determination on the record and shall cause a transcript of the hearing on remand to be prepared and filed with this Court within twenty-one days after completion of proceedings. This Court retains jurisdiction.

/s/ Maureen Pulte Reilly

/s/ Harold Hood

/s/ William B. Murphy