STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 18, 1999
v	No. 208825 Recorder's Court
SEAN M. CHAVIES, Defendant-Appellant.	LC No. 97-002468

Before: Markey, P.J., and McDonald and Fitzgerald, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of armed robbery, MCL 750.529; MSA 28.797, and was subsequently sentenced to five to fifteen years' imprisonment. He appeals by right his conviction and sentence. We affirm.

Defendant first argues that the trial court abused its discretion by allowing testimony that guns were retrieved during a search for defendant at 2565 Helen Street. We agree. The testimony about unspecified guns and narcotics found at 2559 Helen Street or 2565 Helen Street, and about arrests for charges unrelated to this case, was neither material nor probative of a matter in issue. MRE 402; *People v Crawford*, 458 Mich 376, 388-390; 582 NW2d 785 (1998). However, we conclude that the erroneous admission of this evidence did not prejudice defendant and, therefore, was harmless, because the reference to the guns was fleeting, the guns and narcotics in question were not tied to defendant, and there was no indication that defendant was arrested on charges stemming from the seizure of these items. Accordingly, reversal is not warranted on this issue. *Id.*; *People v Mateo*, 453 Mich 203, 215; 551 NW2d 891 (1996).

Defendant next argues that the trial court erred by allowing Detective Christensen to testify about the results of a LEIN check conducted by Detective Fular, which indicated that defendant's home address was 2559 Helen Street. While the trial court apparently determined that Detective Fular was unavailable for purposes of MRE 804, we note that, other than the prosecutor's statement to that effect, there was no evidence on the record to support such a finding. Nevertheless we conclude that the results of the LEIN check were admissible under the business records exception to the hearsay rule. MRE 803(8)(B); *People v Stacy*, 193 Mich App 19, 33-34; 484 NW2d 675 (1992). Where the trial

court reaches the correct result for the wrong reason, this Court will not reverse. *People v Ramsdell*, 230 Mich App 386, 406; 585 NW2d 1 (1998).

Defendant next claims that the trial court abused its discretion by admitting Dione Parker's testimony on rebuttal. We disagree. Parker's testimony was responsive to testimony presented by defendant and, contrary to what defendant argues, the prosecution was not required to present the testimony in its case-in-chief. *People v Figgures*, 451 Mich 390, 398-399; 547 NW2d 673 (1996).

Defendant next argues that the victim's statements to Parker constituted inadmissible hearsay. We disagree. Considering the circumstances surrounding the making of the statements, we believe that a sufficient foundation was established to qualify the statements as an excited utterance. MRE 803(2); *People v Smith*, 456 Mich 543, 550; 581 NW2d 654 (1998); *People v Straight*, 430 Mich 418, 424; 424 NW2d 257 (1988). Thus, the trial court did not abuse its discretion by allowing Parker's testimony on this subject. *People v Kowalak (On Remand)*, 215 Mich App 554, 558; 546 NW2d 681 (1996).

Next, defendant claims that the prosecutor was improperly allowed to impeach him with evidence of his prior convictions for domestic violence. We disagree. The convictions were admissible to rebut defendant's testimony, on direct examination, that he did not have a criminal record. *People v Taylor*, 422 Mich 407, 414; 373 NW2d 579 (1985). Thus, the trial court did not abuse its discretion by allowing defendant to be cross-examined regarding his prior record. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998).

Next, defendant argues that the trial court erred by prohibiting him from testifying as to the cause of the previous altercation between himself and the victim. We agree that such testimony was relevant, MRE 401, because it had a tendency to show the victim's bias or prejudice towards defendant, as well as the victim's motive to fabricate the charges. *People v Mills*, 450 Mich 61, 72; 537 NW2d 909 (1995), modified on other grounds 450 Mich 1212 (1995); *People v Perkins*, 116 Mich App 624, 628; 323 NW2d 311 (1982). However, reversible error may not be predicated on an evidentiary ruling unless a substantial right was affected. MRE 103(a), *People v Mateo*, 453 Mich 203, 212-215; 551 NW2d 891 (1996). Here, the victim's animosity towards defendant, and existence of a motive to fabricate, was apparent from the testimony of other witnesses who testified about the earlier fight between defendant and the victim, and trial counsel was able to sufficiently advance the defense theory during closing argument that defendant was not at the house at the time in question and that the victim was fabricating the charges because of the earlier fight. Therefore, this issue does not warrant reversal.

Defendant further argues that reversal is required because of instructional error. However, because defendant did not object to the court's jury instructions at trial, appellate relief is foreclosed absent manifest injustice. *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993). Viewed as a whole, we conclude that the trial court's prior inconsistent statement and reasonable doubt instructions sufficiently conveyed these concepts to the jury. The instructions did not result in manifest injustice.

Next, defendant argues that he was deprived of a fair trial because of prosecutorial misconduct. Defendant failed to object at trial to any of the alleged instances of prosecutorial misconduct. Viewed in context, we conclude that the many challenged remarks either were not improper, *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995), or that any resulting prejudice could have been cured with an appropriate instruction upon timely request, *People v Fields*, 450 Mich 94, 115; 538 NW2d 356 (1995); *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). Accordingly, appellate relief is not warranted. *Stanaway*, *supra*.

We likewise reject defendant's claim that he was denied the effective assistance of counsel. *United States v Cronic*, 466 US 648; 104 S Ct 2039; 80 L Ed 2d 657 (1984); *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674; *Stanaway*, *supra* at 687-688; *People v Poole*, 218 Mich App 702, 717-718; 555 NW2d 485 (1996). Because defendant did not pursue this issue in the trial court, our review is limited to mistakes apparent on the record. *People v Ginther*, 390 Mich 436, 443-444; 212 NW2d 922 (1973); *People v Darden*, 230 Mich App 597, 604; 585 NW2d 27 (1998). Defendant has not overcome the presumption that his counsel's decision not to request an instruction regarding impeachment by prior conviction was a matter of sound trial strategy. People v Mitchell, 454 Mich 145, 156; 560 NW2d 600 (1997); *Strickland*, *supra* at 689. Finally, defense counsel's failure to object to the isolated references to 2565 Helen Street as being a drug house did not affect the outcome of the proceedings and, therefore, defendant was not denied the effective assistance of counsel. *Cronic*, *supra*; *Strickland*, *supra*.

Lastly, relief is not available for defendant's claim that the trial court improperly scored offense variables one and six of the sentencing guidelines, because the claims are based on the trial court's application of the unchallenged facts to the guidelines. *People v Raby*, 456 Mich 487, 496-499; 572 NW2d 644 (1998); *Mitchell*, *supra*, 454 Mich at 173-178. Further, defendant's sentence is proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990).

We affirm.

/s/ Jane E. Markey
/s/ Gary R. McDonald
/s/ E. Thomas Fitzgerald