

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEMAR D. BLAKE,

Defendant-Appellant.

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UNPUBLISHED

July 27, 2001

No. 223066

Wayne Circuit Court

LC No. 99-001631

99-001632

Before: Wilder, P.J., and Hood and Griffin, JJ.

MEMORANDUM.

Following a bench trial, defendant was convicted in lower case number 99-001631 of armed robbery, MCL 750.529, and convicted in lower case number 99-001632 of armed robbery and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to concurrent prison terms of five to twenty years' and six to twenty years' on the armed robbery convictions, to be served consecutively to the mandatory two-year term for felony-firearm. Defendant appeals as of right and we affirm.

Defendant's sole issue on appeal is that the trial court erred in admitting testimony that he was found in possession of a gun a few weeks after the robberies. We review the trial court's ruling on the admission of evidence for an abuse of discretion. *People v Gould*, 225 Mich App 79, 88; 570 NW2d 140 (1997). "[A] preserved, nonconstitutional error is not a ground for reversal unless 'after an examination of the entire cause, it shall affirmatively appear' that it is more probable than not that the error was outcome determinative." *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999).

Defendant contends that pursuant to *Old Chief v United States*, 519 US 172; 117 S Ct 644; 136 L Ed 2d 574 (1997), the evidence should have been excluded because its probative value was substantially outweighed by the danger of unfair prejudice, MRE 403. We disagree. In *Old Chief*, the Court held that when a defendant's convict status is at issue, as where the defendant is charged with being a felon in possession of a firearm, and the defendant agrees to stipulate that he had a prior felony conviction, evidence of the name and nature of the prior offense is inadmissible under FRE 403 because of the risk that jurors would use such information in "bad character reasoning." *Id.* at 185, 191-192. Accord *People v Swint*, 225 Mich App 353, 379; 572 NW2d 666 (1997).

In this case, by contrast, defendant's convict status was not at issue and he did not offer to stipulate to an element of the crime. Thus, evidence that defendant was found in the area where the robberies occurred in possession of a weapon similar to that used in the robberies was highly relevant because it lent credence to the victim's testimony that defendant had used a weapon in committing the robberies. *People v Hall*, 433 Mich 573, 583-584; 447 NW2d 580 (1989). There was little risk of unfair prejudice from the admission of the evidence because this was a bench trial in which the trial court was presumed to have followed the law, *People v Farmer*, 30 Mich App 707, 711; 186 NW2d 779 (1971), by weighing the probative value of the evidence and disregarding any improper inferences that might be drawn therefrom. *People v Payne*, 37 Mich App 442, 445; 194 NW2d 906 (1971); *Schultz v Butcher*, 24 F3d 626, 632 (CA 4, 1994).

Affirmed.

/s/ Kurtis T. Wilder

/s/ Harold Hood

/s/ Richard Allen Griffin