

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARIO ALLEN,

Defendant-Appellant.

UNPUBLISHED

June 17, 2004

No. 246416

Wayne Circuit Court

LC No. 01-014273

Before: Neff, P.J., and Zahra and Murray, JJ.

PER CURIAM.

Defendant appeals as of right from jury convictions of malicious destruction of property valued between \$1,000 and \$20,000, MCL 750.380(3)(a), felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to concurrent prison terms of two to five years and one to four years on the property and assault convictions, respectively, to be served consecutively to the mandatory two-year term for felony-firearm. We affirm.

On appeal, defendant raises two claims of error relating to the admission of evidence. The trial court's ruling regarding the admission of evidence is reviewed for an abuse of discretion. *People v Hine*, 467 Mich 242, 250; 650 NW2d 659 (2002). A preliminary question whether evidence is admissible under a particular rule of evidence is reviewed de novo. *People v Layher*, 464 Mich 756, 761; 631 NW2d 281 (2001). "An error in the admission or exclusion of evidence is not a ground for reversal unless refusal to take this action appears inconsistent with substantial justice." *People v McLaughlin*, 258 Mich App 635, 650; 672 NW2d 860 (2003). "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 first contends that the trial court erred in admitting the insurance company claim forms an arson investigator obtained from Allstate, the victims' insurance company.

Before evidence of a particular matter can be admitted, it must be identified or authenticated. MRE 901(a). Business documents sought to be admitted under MRE 803(6) can be identified by the testimony of a witness with knowledge that the documents are what they are claimed to be, MRE 901(b)(1), or self-authenticated by an affidavit from the records custodian. MRE 902(11). There is nothing in the record to indicate that the documents were self-

authenticated and the arson investigator, who did not prepare or keep Allstate's business records, lacked knowledge that they were Allstate's business records. All he could say was that he received them from Allstate. Therefore, the trial court abused its discretion in admitting the documents into evidence.

Although the court erred in admitting the evidence, reversal is not required if the error did not prejudice the defendant. *People v Rodriguez (On Remand)*, 216 Mich App 329, 332; 549 NW2d 359 (1996). In this case, defendant did not dispute that the victims' property had been vandalized or that the cost of the damage met the threshold requirement for a felony offense; he claimed only that he was not present and thus did not know about or participate in the events of that night. In addition, the documents in question were cumulative to witnesses' testimony that the losses exceeded \$1,000. Therefore, the erroneous admission of the documents did not prejudice defendant. *Id.*

Defendant next contends that the trial court erred in excluding from evidence Jackie Carter's statement to the police, which statement conflicted with her trial testimony.

Any witness can be examined regarding a prior statement given in connection with a case. MRE 613(a). If the prior statement is inconsistent with the witness' testimony, extrinsic evidence of the statement is only admissible if "the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require." MRE 613(b). Evidence of a prior inconsistent statement is admissible for impeachment purposes and not as substantive evidence unless a foundation for an exception to the hearsay rule is laid. *Merrow v Bofferding*, 458 Mich 617, 631-632; 581 NW2d 696 (1998); *People v Jenkins*, 450 Mich 249, 256; 537 NW2d 828 (1995).

It appears from Carter's testimony regarding the statement that the statement was inconsistent with her trial testimony. Therefore, the trial court abused its discretion in excluding the statement. However, Carter was cross-examined extensively about her statement and acknowledged that in the statement, she did not identify the man with the gun by name and identified another man by defendant's name. Because the jury was presented with the relevant inconsistencies contained in Carter's prior statement, defendant has not shown it likely that the failure to admit the document itself was outcome determinative.

Affirmed.

/s/ Janet T. Neff
/s/ Brian K. Zahra
/s/ Christopher M. Murray