STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 17, 2005
v	No. 255636 Wayne Circuit Court
DEQUANE EUGENESCOTT MCKAY, Defendant-Appellant.	LC No. 04-001123-01

Before: Murphy, P.J., and Sawyer and Meter, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to consecutive prison terms of ninety days to four years for the assault conviction and two years for the felony-firearm conviction. He appeals as of right. We affirm.

Defendant's convictions arise from a shooting incident during which defendant allegedly fired several gunshots in the direction of the complainant, who was standing in the doorway of his home. Defendant gave a statement to the police in which he admitted going to the complainant's home and engaging in a fight with the complainant but denied firing any gunshots.

Defendant argues that shell casings discovered outside the premises where the shooting allegedly occurred and a bullet that was found embedded in a doorframe of an interior door near the entry of the home at which shots were allegedly fired should not have been admitted into evidence because there was not an adequate foundation to link this evidence to the charged crime.

Defendant waived any evidentiary error with respect to the admission of the bullet and the casings by stating at trial that he had no objection to the admission of this evidence. See *People v Carter*, 462 Mich 206, 213-219; 612 NW2d 144 (2000); *People v Lueth*, 253 Mich App 670, 688; 660 NW2d 322 (2002).

In any event, the evidence was admissible. The casings and the bullet were relevant to the charged crimes because they corroborated the complainant's testimony that a shooting occurred. A proper foundation for the admission of physical evidence requires that the evidence be what it is purported to be and also be connected with the crime or the accused. *People v Furman*, 158 Mich App 302, 331; 404 NW2d 246 (1987). Here, a foundation was established by

the testimony of the complainant and an eyewitness regarding the circumstances of the shooting. The credibility of their accounts was a matter for the jury. Because the evidence was admissible, counsel was not ineffective for not objecting. Any objection would have been futile. *People v Flowers*, 222 Mich App 732, 737-738; 565 NW2d 12 (1997).

Defendant also argues that reversal is required because irrelevant and highly inflammatory evidence concerning a fire was received.

At the beginning of trial, the parties stipulated that there would be no mention of an alleged arson that occurred at the premises, because defendant was not charged with arson. During trial, however, complaining witness Hall referred to "a fire" during the following exchange:

> *Q*. Did there come a time when you actually located this bullet hole?
>
> *A*. Yes.
>
> *Q*. Did you call the police officers?
>
> *A*. Well, the police officers was [sic] called the second time after a fire took place.

A witness' voluntary and unresponsive statement does not generally constitute error requiring reversal. *People v Kelsey*, 303 Mich 715, 717; 7 NW2d 120 (1942). Assuming arguendo that error occurred and that counsel's objection was adequate to preserve the issue, defendant is entitled to relief only if it is "more probable than not that the error was outcome determinative." *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999). Here, the brief reference to a "fire," which was not described as arson and not linked to defendant, was harmless. Indeed, defense counsel expressly stated that she was not requesting a mistrial. Therefore, reversal is not required.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Patrick M. Meter