

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ADAM KIRPAL THOMPSON,

Defendant-Appellant.

UNPUBLISHED
December 6, 2005

No. 256744
Kent Circuit Court
LC No. 03-006622-FH

Before: Bandstra, P.J., and Neff and Markey, JJ.

PER CURIAM.

Defendant appeals by right his conviction for home invasion in the first degree, MCL 750.110a(2), and conspiracy to commit that crime, MCL 750.157a. We affirm.

We review defendant's unpreserved constitutional claims of error for plain error affecting substantial rights. *People v Carines*, 460 Mich 750; 597 NW2d 130 (1999).

Defendant first challenges on hearsay grounds the admission into evidence of a statement he made to police that was read into evidence by the detective who taped the statement during his interrogation of defendant¹. Defendant has failed to meaningfully argue the issue on appeal, he merely claims it is inadmissible hearsay. To properly present an appeal, an appellant must appropriately argue the merits of the issues he identifies in his statement of the questions involved. *People v Jones (On Rehearing)*, 201 Mich App 449, 456-457; 506 NW2d 542 (1993). Defendant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims. *People v Matuszak*, 263 Mich App 42, 59; 687 NW2d 342 (2004).

¹ The trial court explained to the jury that the tape was difficult to understand because of a flaw in the recording device. However, the tape was provided to the jury along with copies of the transcript that was prepared by an employee of the police department. The court reporter did not transcribe the reading of the transcript into the trial court record, there was no objection to the procedure used and defendant does not quote any of the statement which he now claims was prejudicial.

Even if the issue were properly on appeal, defendant's argument lacks merit. He does not contest that his statements fall within the party-opponent rule of MRE 801(d)(2). By the terms of that rule, his statement is therefore not hearsay. His reliance on *Crawford v Washington*, 541 US 36; 124 S Ct 1354; 158 L Ed 2d 177 (2004), for the proposition that the testimony violated his right to confrontation is thus misplaced. Because the statement was not hearsay, the constitutional analysis of *Crawford* and its concerns about the right to confrontation are not applicable. In addition, we fail to see how the right to confrontation can apply to defendant when it is his own statement he now challenges and who chose not to testify. The trial court did not err in admitting defendant's statement to police.

Defendant, citing MRE 803, next argues that he was unfairly prejudiced by the admission of testimony about a firearm. He claims that the testimony was unrelated to the charges against him and tended to make the jury consider him a gunman or a bad person.

This argument is not persuasive. No testimony suggested that defendant fired or even touched the gun. The testimony about the gunplay provided necessary context and content to proving the elements of the charges against defendant because it was crucial to proving that defendant entered the dwelling with the intent to commit an assault. It was also necessary to proving that defendant committed conspiracy to commit that offense. Without testimony connected to the firearm, the jury would have had to consider disconnected testimony that did not provide an accurate timeline of the events leading to the crimes or any indication of why defendant broke into the dwelling. With the testimony, the jury gained a full account of what happened and why and could then weigh the credibility of the witnesses and decide the issues of fact. Relevant evidence is broadly defined under MRE 401. Evidence is admissible if it is helpful in throwing light on any material point. *People v Aldrich*, 246 Mich App 101, 114; 631 NW2d 67 (2001).

In any event, the evidence did not unfairly prejudice defendant. Unfair prejudice does not mean damaging. *People v Mills*, 450 Mich 61, 75; 537 NW2d 909 (1995). Reversal is not warranted because the alleged error did not result in the conviction of an innocent defendant or seriously affect the fairness, integrity, or public reputation of judicial proceedings. *People v Taylor*, 252 Mich App 519, 523; 652 NW2d 526 (2002). The trial court did not err when it admitted evidence connected to the firearm.

Finally, defendant argues that his counsel was ineffective for failing to raise at trial the evidentiary issues analyzed above. This argument lacks merit. As discussed above, neither of defendant's claims of errors is persuasive. Objections would have only prompted adverse rulings from the trial court. Defense counsel is not ineffective for failing to make a futile objection. *People v Fike*, 228 Mich App 178, 182; 577 NW2d 903 (1998).

Affirmed.

/s/ Richard A. Bandstra

/s/ Janet T. Neff

/s/ Jane E. Markey