

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN T. STANLEY,

Defendant-Appellant.

UNPUBLISHED

January 29, 2008

No. 275140

Wayne Circuit Court

LC No. 06-009517-01

Before: Bandstra, P.J., and Donofrio and Servitto, JJ.

MEMORANDUM.

Defendant appeals as of right following his jury trial convictions of assault with intent to murder (three counts), MCL 750.83, felonious assault (two counts), MCL 750.82, attempting to disarm a police officer, MCL 750.479b(2)(a), felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Because defendant was not denied a fair trial when a police officer testified that the vehicle defendant was driving had been stolen in an earlier armed robbery, and defendant was not denied the effective assistance of counsel at trial, we affirm. This appeal is being decided without oral argument pursuant to MCR 7.21(E).

Defendant argues that he was denied a fair trial when a police officer testified that the car in which defendant was seen driving had been stolen during an armed robbery. He also claims that defense counsel was ineffective for failing to object to the testimony. Because the evidentiary issue is unpreserved, defendant must demonstrate plain error affecting a substantial right, and reversal is warranted only if the error resulted in the conviction of an innocent defendant or the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. *People v Taylor*, 252 Mich App 519, 523; 652 NW2d 526 (2002).

Defendant correctly points out that use of character evidence to convict a defendant based on his past misconduct is generally inadmissible. MRE 404(b); *People v Johnigan*, 265 Mich App 463, 465; 696 NW2d 724 (2005). However, the officer's testimony was not offered for the purpose of showing that defendant had been involved in a prior crime. The testimony was given in response to the prosecutor's question regarding the follow-up investigation of the shooting. The fact that the vehicle was found in the area of the shooting was clearly relevant. Even assuming that the testimony was improper, whether erroneously admitted evidence requires reversal depends on the nature of the error and its effect in light of the weight of the properly admitted evidence. *People v Phillips*, 469 Mich 390, 397; 666 NW2d 657 (2003). An evidentiary error does not merit reversal in a criminal case unless, after an examination of the

entire cause, it appears that it is more probable than not that the error was outcome determinative. *People v Osantowski*, 274 Mich App 593, 607; 736 NW2d 289 (2007).

Our review of the record reveals that there was substantial evidence offered to prove defendant's guilt. Several eyewitnesses identified defendant as the shooter. Police officers who responded to the scene saw defendant with a gun. The gun was retrieved by another police unit, and the spent casings found by evidence technicians matched the gun. Any alleged error could not have been outcome determinative. For this reason, defendant also fails to meet his burden of showing that there is a reasonable probability that, but for counsel's alleged error in failing to object, the result of the proceedings would have been different. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994); *People v Odom*, 276 Mich App 407, 415; 740 NW2d 557 (2007)).

Affirmed.

/s/ Richard A. Bandstra

/s/ Pat M. Donofrio

/s/ Deborah A. Servitto