

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GEOFFREY LEE GOINS,

Defendant-Appellant.

UNPUBLISHED

January 21, 2010

No. 289039

Lenawee Circuit Court

LC No. 08-013808-FH

Before: Murphy, C.J., and Jansen and Zahra, JJ.

PER CURIAM.

Defendant appeals by right his jury trial convictions of interfering with electronic communication, MCL 750.540(5)(a), and unlawful imprisonment, MCL 750.349b.¹ Defendant argues that the trial court erred in excluding the contents of a MySpace entry purportedly written by the complainant and former girlfriend, Holly Bradley, which contained a different account of the alleged assault. Defendant argues that the trial court's decision to exclude the contents of the MySpace entry deprived him of the right to present a defense. We conclude that defendant was not deprived of his constitutional right to present a defense. We affirm.

I. Basic Facts and Procedure

According to Bradley, on March 15, 2008, she and defendant were living in a rented house. After Bradley informed defendant that she had found an apartment in which she intended to live by herself, she readied herself to leave for the evening. According to Bradley, defendant refused to let her leave. He assaulted and berated her and stopped her from dialing her cell phone for help until she finally got an opportunity to run from the house. When she returned later, she discovered that a number of her belongings were missing. Defendant testified that he did not assault Bradley, did not steal her property, did not hold her against her will, and did not interfere with any communication.

The trial court refused to allow admission of the content of the MySpace account because no evidence was produced to verify that the account belonged to Bradley. The trial court

¹ The jury acquitted defendant of a charge of larceny in a building.

affirmed this evidentiary ruling even after defendant testified that he had met Bradley through MySpace, that he was familiar with her account, and that the statement came from her account.

II. Analysis

Defendant argues that the trial court's decision to exclude the contents of the MySpace entry deprived him of the right to present a defense. A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion. *People v Aldrich*, 246 Mich App 101, 113; 631 NW2d 67 (2001). Whether a defendant's right to present a defense was violated by the exclusion of evidence is generally a constitutional question that we review de novo. *People v Kurr*, 253 Mich App 317, 327; 654 NW2d 651 (2002). However, because defendant did not raise this issue below, we review it for plain error affecting his substantial rights. *People v Pipes*, 475 Mich 267, 279; 715 NW2d 290 (2006).

Defendant argues that the trial court should have found the MySpace account admissible pursuant to MRE 901. MRE 901(a) provides, "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." One example of adequate authentication is:

- (4) Distinctive characteristics and the like. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances. [MRE 901(b)(4)].

Here, provided in what certainly appears to be Bradley's MySpace page are descriptive details of the assault that fit within what a reasonable person would consider to be "distinctive content" not generally known to anyone other than Bradley, defendant, or someone in whom one or the other confided. Given the content of the entry itself, which is only slightly less inculpatory than Bradley's testimony, and the unlikelihood that Bradley would have given her account password to a third party so that that person could write the entry, the jury reasonably could have found that Bradley authored the content in the MySpace account. See e.g., *People v Bowman*, 254 Mich App 142, 151; 656 NW2d 835 (2002). The trial court should have found that the evidence was properly authenticated under MRE 901.

However, plaintiff correctly argues that the evidence could have been excluded under MRE 613(b). MRE 613(b) provides:

Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless 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. This provision does not apply to admissions of a party-opponent as defined in Rule 801(d)(2).

Before attempting to impeach a witness with a prior inconsistent statement, a litigant must lay a proper foundation in accordance with the court rule. *People v Weatherford*, 193 Mich App 115, 122; 483 NW2d 924 (1992). "To do so, the proponent of the evidence must elicit testimony inconsistent with the prior statement, ask the witness to admit or deny making the first statement, then ask the witness to admit or deny making the later, inconsistent statement, allow the witness

to explain the inconsistency, and allow the opposite party to cross-examine the witness.” *Barnett v Hidalgo*, 478 Mich 151, 165; 732 NW2d 472 (2007). Only then can a litigant offer extrinsic evidence of the inconsistent statement to impeach the declarant. *Id.*; MRE 613(b).

Defendant did not question Bradley about the MySpace entry, or how the account in the entry differed from her testimony, before attempting to have the entry admitted. Bradley denied making the entry on redirect examination, but defense counsel did not attempt to question her further about the entry, nor did he again move for its introduction. Thus, the entry was not admissible under the circumstances, albeit for a reason not reached by the trial court. We can affirm where the trial court reaches the right result, albeit for the wrong reason. *People v Brownridge (On Remand)*, 237 Mich App 210, 217; 602 NW2d 584 (1999).

In addition, were we to find that the trial court erred in refusing to allow the admission of the entry, defendant cannot show that he is entitled to relief. An erroneous evidentiary ruling does not require reversal unless it “affirmatively appear[s] that it is more probable than not that the error was outcome determinative.” *People v Lukity*, 460 Mich 484, 488, 495-496; 596 NW2d 607 (1999); MCL 769.26; MRE 103. This is not the case here. As in Bradley’s trial testimony, her MySpace entry contains a detailed assertion that defendant repeatedly attacked her, and that he refused to let her leave the apartment. It also contains a statement that she tried to use the phone and that defendant stopped her from doing so. The discrepancies between the statement and Bradley’s trial testimony appear relatively minor. Defendant was able to cross-examine Bradley about other inconsistencies. He also testified and denied that he pushed her, choked her, prevented her from leaving, or prevented her from phoning for help. Given the remainder of the evidence presented, it is unlikely that the jury would have focused on differences between Bradley’s testimony and the MySpace account to find her incredible.

In addition, defendant had ample opportunity to challenge Bradley’s credibility and alleged prejudice through his own testimony as well as other testimony and evidence. He also attempted to impeach her with her statements to an investigating officer, her admission that she takes medication for bi-polar disorder, contradictions between her testimony and that of defendant’s mother concerning an earlier visit by defendant’s mother and son, and her statements to defendant’s brother, in which she exaggerated her injuries compared to her trial testimony. During closing argument, defendant used these discrepancies to argue that Bradley was not believable. Moreover, as noted above, the contents of the entry were not favorable to defendant. We conclude that the trial court’s exclusion of the contents of the MySpace page did not in any way impair defendant’s right to present a defense. Thus, even were we to find that the exclusion was erroneous, it was harmless. See *People v Shepherd*, 472 Mich 343, 347; 697 NW2d 144 (2005).

Defendant raises a secondary claim of error concerning the trial court’s refusal to admit an e-mail from Bradley to an investigating officer, in which she stated that the MySpace entry is not hers, that she shared the MySpace account with defendant, and that only he had access to the login information. Had the trial court admitted the MySpace entry, this e-mail might have been

relevant to establish whether Bradley wrote the entry. However, given that any error in the refusal to admit the entry was harmless under the circumstances, we conclude that any error concerning the refusal to admit this e-mail harmless.

Affirmed.

/s/ William B. Murphy
/s/ Kathleen Jansen
/s/ Brian K. Zahra