

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTIAN DAVID SIMS,

Defendant-Appellant.

UNPUBLISHED

April 20, 2010

No. 288685

Oakland Circuit Court

LC No. 2008-220585-FH

Before: M.J. KELLY, P.J., and TALBOT and WILDER, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for possession with intent deliver methamphetamine (Ecstasy), MCL 333.7401(2)(b)(i), and possession of marijuana, MCL 333.7403(2)(d). Defendant was sentenced, as a third habitual offender, MCL 769.11, to 6 to 20 years' imprisonment for the possession with intent to deliver Ecstasy conviction, and 108 days in jail for the possession of marijuana conviction. We affirm.

Defendant's sole issue on appeal is that the content of letters allegedly authored by defendant and sent from jail to his mother regarding the sale of Ecstasy pills were admitted into evidence at trial without a proper foundation as required by MRE 901(b)(1). "A trial court's evidentiary decisions are reviewed for an abuse of discretion." *People v Yost*, 278 Mich App 341, 353; 749 NW2d 753 (2008). An abuse of discretion occurs when the trial court "selects an outcome that does not fall within the range of reasonable and principled outcomes." *People v Young*, 276 Mich App 446, 448; 740 NW2d 347 (2007). A trial court "abuses its discretion when it makes an error of law." *People v Giovannini*, 271 Mich App 409, 417; 722 NW2d 237 (2006) (citation omitted). "However, whether a rule or statute precludes admission of evidence is a matter of law and is reviewed de novo." *Yost*, 278 Mich App at 353, quoting *People v Martin*, 271 Mich App 280, 315; 721 NW2d 815 (2006).

On appeal, defendant contends that the content of the letters were not properly authenticated pursuant to MRE 901(b)(1) through the testimony of a witness with personal knowledge. While we concur that the letters were not properly authenticated, we find the error was harmless.

In general, "all relevant evidence is admissible" at trial. *People v Fletcher*, 260 Mich App 531, 553; 679 NW2d 127 (2004); MRE 402. Evidence is relevant if it makes a material fact more or less probable. *People v Knox*, 469 Mich 502, 509; 674 NW2d 366 (2004); MRE 401.

“A material fact is ‘[a] fact that is significant or essential to the issue or matter at hand.’” *People v Katt*, 468 Mich 272, 292; 662 NW2d 12 (2003), quoting Black's Law Dictionary (7th ed).

In accordance with MRE 901(a), for a document to be admissible, it must be authenticated by the introduction of sufficient evidence to “support a finding that the document is what the proponent claims it to be.” *People v Howard*, 226 Mich App 528, 553; 575 NW2d 16 (1997), quoting MRE 901(a). MRE 901(b) delineates, “[b]y way of illustration only, and not by limitations,” various means or methods to comply with “the requirements of this rule.” Specifically, MRE 901(b)(1) permits the authentication of a document through the elicitation of testimony from a “witness with knowledge . . . that a matter is what it is claimed to be.”

In this case, there was a failure to establish a proper foundation to show that Sergeant Harry Dare had personal knowledge that defendant wrote the contested letters. Although the prosecutor told the trial court, outside the presence of the jury, that defendant’s mother could be brought to court, that Dare could provide corroborating evidence regarding the letters because he spoke to defendant, and that the envelopes from the jail identified defendant as the author of the letters, such information was never actually provided through Dare’s testimony. The only foundation provided before the admission of the content of the letters was Dare’s statement, “Yes, sir, I spoke to him [defendant] on an occasion.” While the trial court indicated that the prosecutor was to limit his questioning so that the jury would not be informed that the location of this conversation was in the jail, a proper foundation regarding Dare’s personal knowledge of the existence and content of the letters was still required. Hence, their admission into evidence constituted error.

However:

No judgment or verdict shall be set aside or reversed or a new trial be granted by any court of this state in any criminal case, on the ground of misdirection of the jury, or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless in the opinion of the court, after an examination of the entire cause, it shall affirmatively appear that the error complained of has resulted in a miscarriage of justice. [MCL 769.26.]

In other words, “[u]nder this rule, reversal is required only if the error is prejudicial.” *People v McLaughlin*, 258 Mich App 635, 649; 672 NW2d 860 (2003). Thus, an evidentiary error is deemed to be harmless and does not merit reversal in a criminal case 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 Whittaker*, 465 Mich 422, 426-427; 635 NW2d 687 (2001) (citation and internal quotation marks omitted).

A review of the evidence and record demonstrates that the error did not result in a miscarriage of justice. Defendant was the only person observed in the back seat of the car by the police officers conducting the traffic stop. Officers observed defendant engaged in movements suggesting nervousness when approaching the vehicle and saw defendant attempt to conceal a tan plastic bag while one of the officers was speaking with the driver. The tan plastic bag that defendant was attempting to conceal contained, in addition to the 354.5 Ecstasy pills and 6.2 grams of marijuana, men’s toiletry items, and defendant was the only male in the vehicle. In addition, the cell phone charger found in the tan plastic bag matched the phone confiscated from

defendant's person. Defendant was also found to be in possession of a significant sum of cash when searched. The division of the Ecstasy pills into four smaller, separate bags suggested preparation for sale or delivery. This was consistent with the expert testimony provided by Dare indicating that possession of such a large quantity of pills was for distribution or delivery and not personal use. Consequently, based on the quantity and type of the additional evidence supporting defendant's convictions, any error in admitting the content of the letters was harmless because it was not outcome determinative.

Affirmed.

/s/ Michael J. Kelly
/s/ Michael J. Talbot
/s/ Kurtis T. Wilder