STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 12, 2010
v	No. 290658 Oakland Circuit Court
ANDON FILIPI, Defendant-Appellant.	LC No. 2007-213509-FC

Before: GLEICHER, P.J., and ZAHRA and K. F. KELLY, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of conspiring to deliver and/or possess with an intent to deliver 1,000 or more grams of cocaine, MCL 750.157a; MCL 333.7401, and possession with intent to deliver 1,000 or more grams of cocaine, MCL 333.7401(2)(a)(i). Defendant was sentenced to 12 to 30 years' imprisonment for each conviction. We affirm.

I. BASIC FACTS

Andon Filipi (defendant), Manjeet Singh Bhattal, Anthony Gonzalez, David Trevino, and Torin Prendi were all allegedly involved in trafficking and selling narcotics together. On March 29, 2007, defendant and Gonzalez drove to Waterford, Michigan in a vehicle rented under Bhattal's name where they met an individual at a car wash. A bag containing 12 kilograms of cocaine was transferred to defendant's and Gonzalez's car. Defendant and Gonzalez, with Gonzalez driving, continued to travel toward Detroit, but they were pulled over by a police officer for traveling over the speed limit. The vehicle was subsequently searched and the cocaine was found. Defendant was arrested and charged with the crimes underlying his convictions. Defendant and his coconspirator, Bhattal, were tried by the same jury. Defendant now appeals.

II. EVIDENTIARY RULINGS

On appeal, defendant raises numerous alleged evidentiary errors, asserting that the trial court erred by admitting certain evidence. We review a trial court's decision whether to admit evidence for an abuse of discretion. *People v Aldrich*, 246 Mich App 101, 113; 631 NW2d 67 (2001). "An abuse of discretion occurs when the court chooses an outcome that falls outside the range of reasonable and principled outcomes." *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008). To the extent that defendant failed to object to the admission of certain

evidence below, our review is for plain error affecting defendant's substantial rights. *People v Hawkins*, 245 Mich App 439, 447; 628 NW2d 105 (2001).

A. 404(b) EVIDENCE

Defendant first contends that the trial court permitted impermissible character evidence to be admitted on several occasions. Generally, all evidence that is relevant is admissible, while irrelevant evidence is not admissible. MRE 402. However, "[w]here the relevance of the proposed evidence is to show the defendant's character or the defendant's propensity to commit crime, the evidence must be excluded." *People v Knox*, 469 Mich 502, 510; 674 NW2d 366 (2004); see also MRE 404(b)[1]. Nonetheless, evidence that implicates MRE 404(b) may be admissible, if it is offered for a proper purpose. *Knox*, 469 Mich at 509. A proper purpose is one other than establishing a defendant's character to show propensity to commit the charged offense. *People v Johnigan*, 265 Mich App 463, 465; 696 NW2d 724 (2005).

i. AUGUST 2006 INCIDENT

Defendant argues that the admission of testimony of investigator Kevin Enyart regarding a police visit to defendant's home is cause for a new trial. We disagree. Investigator Enyart testified that he and his partner went to defendant's home in the Chicago area in August 2006 in order to perform a "knock and talk."[2] After receiving permission from defendant and his girlfriend, Investigator Enyart searched the home. During the search, the police found two handguns and approximately $22,000 in cash. After the guns were found, defendant was arrested. Later at the police station, defendant admitted to making a trip to Waterford, Michigan with coconspirator Anthony Gonzalez, where they delivered $50,000 in cash to a residence for payment for a prior drug sale. All of this evidence was admitted over defendant's objections, apparently for the purpose of corroborating Gonzalez's testimony.[3]

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[1] MRE 404(b)(1) provides:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identify, or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

[2] A "knock and talk" is when the police go to someone's home and simply ask if someone there will voluntarily talk and answer questions.

[3] Although the prosecution argued below that the evidence was valid *res gestae* evidence, the trial judge appears to have rejected this rationale. The trial judge stated, "It sounds to me like we're talking about at best a completely different set of transactions here. So in other words, . . . what's your connection?"

We agree with defendant that the guns, money, and defendant's statements relating to the August 2006 incident constituted impermissible character evidence and that any probative value this evidence may have had was outweighed by unfair prejudice. We simply see no basis upon which a proper purpose could be established that would justify the admission of this evidence under MRE 404(b).

Although the prosecution argues that the evidence was properly admitted because it was a part of the *res gestae* of the conspiracy charge and because it corroborated Gonzalez's testimony, neither of these purposes properly justifies its admission. The evidence did not constitute valid *res gestae* evidence, because it was not "so blended or connected" with the 2007 cocaine transaction and conspiracy "that proof of one incidentally involves the other or explains the circumstances of the crime." *People v Sholl*, 453 Mich 730, 742; 556 NW2d 851 (1996) (citation and quotation marks omitted). Nor was the 2006 incident "an antecedent event from which the [crimes charged] follow[ed] as an effect from a cause." *People v Malone*, ___ Mich App ___; ___NW2d ___ (2010) citing *People v Delgado*, 404 Mich 76, 83; 273 NW2d 395 (1978). In short, we fail to see how guns and money captured in Illinois seven months before defendant's arrest in Michigan and defendant's statements regarding a $50,000 marijuana sale were "inextricably related" to a conspiracy to deliver and/or possess over 1,000 grams of cocaine in Michigan.

The evidence was also not properly admitted for the purpose of corroborating Gonzalez's testimony, who had previously testified regarding selling a gun to defendant and taking a trip to Waterford to deliver $50,000 in cash. "Bolstering a witness'[s] credibility is not . . . a sufficient basis on which to admit evidence of a defendant's other misconduct." *People v Engelman*, 434 Mich 204, 238; 453 NW2d 656 (1990) (Levin, J., concurring). Accordingly, the trial court abused its discretion by admitting the evidence.

Nonetheless, reversal is not required unless, after an examination of the entire case, it appears that it is more probable than not that the error was outcome determinative. *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999). 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). Reversal is required only if the error was prejudicial. *People v McLaughlin*, 258 Mich App 635, 650; 672 NW2d 860 (2003).

Here, the evidence was overwhelming that defendant conspired to deliver and/or possess with an intent to deliver at least 1,000 grams of cocaine and that defendant, in fact, possessed at least 1,000 grams of cocaine in Michigan. Evidence admitted at trial showed that between the day before the defendant's arrest in Michigan and the day of his arrest, approximately 50 phone calls were placed between defendant and his coconspirators. Further testimony indicated that defendant directed codefendant Bhattal to remove bags of drugs from the taxi office after codefendant Trevino was arrested. Defendant also suggested to Gonzalez that they go to Michigan on March 29, 2007. On the way to Michigan, defendant explained to Gonzalez that they were picking up cocaine that was to be delivered to a truck that would take it to Canada. Defendant obtained directions over his cell phone and drove the rented vehicle to a car wash in Waterford, Michigan, where Gonzalez and defendant met Prendi. A bag containing the cocaine was then transferred from Prendi's vehicle to defendant's rental vehicle. After leaving the car wash, with defendant a passenger, the vehicle was pulled over by police. When initially stopped,

defendant stated that he did not have $100 for bond for Gonzalez, who was being arrested for driving without a license, but defendant later admitted that the $12,000 cash found in the glove box was his. The police officer then discovered 12 kilograms of cocaine in the back of the vehicle. Thus, defendant has failed to show how, in light of the properly admitted evidence, his guilty verdicts would have been any different if the evidence relating to the August 2006 search of his home had not been admitted. As a result, defendant is not entitled to any relief on this basis.

ii. PRIOR MARIJUANA TRANSACTIONS

Defendant next argues that the admission of evidence relating to prior marijuana transactions constituted impermissible other acts evidence in violation of MRE 404(b). Defendant further contends that the evidence had minimal probative value that was outweighed by unfair prejudice. We disagree.

At trial, the prosecution elicited testimony that described several marijuana transactions that Gonzalez, Bhattal, and defendant conducted. The first involved a trip from the Chicago area to Indiana sometime in 2007. Bhattal and Gonzalez drove to a casino, met two individuals, picked up between 150 and 200 pounds of marijuana, and returned to Illinois. After returning to Illinois, Bhattal and Gonzalez met with defendant, and defendant agreed that Gonzalez would store the marijuana in his apartment. The second marijuana transaction, about a month later, also involved Gonzales, Bhattal, and defendant. Bhattal and Gonzalez drove separately from Illinois to Indiana to meet the same two individuals again. Once they arrived, Gonzalez's truck was loaded with another 150 to 200 pounds of marijuana. Gonzalez drove his "loaded" truck back to Illinois and Bhattal followed. Gonzalez and Bhattal then met up with defendant and they agreed on how to store the marijuana.

This evidence was not offered to show that defendant had a propensity to deliver narcotics, but instead was offered to show the relationship between Bhattal, Gonzalez, and defendant, to explain how the relationship evolved over time, and to refute any claims of innocent intent or lack of knowledge.[4] Consequently, the evidence was offered for a proper purpose and did not run afoul of MRE 404(b).

Moreover, the probative value of this evidence was not substantially outweighed by the risk of unfair prejudice. MRE 403. This is not a case where "marginally probative evidence will be given undue or preemptive weight by the jury." *People v Ortiz*, 249 Mich App 297, 306; 642 NW2d 417 (2001). Rather, the evidence of the prior marijuana transactions tends to show that defendant had knowledge of narcotic trafficking and had an extensive relationship with codefendants Bhattal and Gonzalez. Thus, the evidence had a direct bearing on defendant's claim to police that the cocaine in the back of the vehicle was not his. Accordingly, the evidence had a fairly strong probative value. And, while it is clear that the evidence did possess some

[4] At trial, codefendant Bhattal repeatedly argued that his actions were simply innocent acts unrelated to any conspiracy. Other testimony also revelaed that defendant claimed to the police during the traffic stop that the cocaine found in the back of the rental vehicle was Gonzalez's and not his.

danger of unfair prejudice, i.e., because a jury could presume that because defendant was involved in marijuana transactions he was involved in a cocaine transactions, it cannot be said to substantially outweigh its probative value. In fact, we note that the trial court gave a limiting instruction, which forbade the jury from using the evidence in this improper manner. Since jurors are presumed to follow the court's instructions, *People v Gayheart*, 285 Mich App 202, 210; 776 NW2d 330 (2009), the actual danger of unfair prejudice is lessened, see *People v Starr*, 457 Mich 490, 503; 577 NW2d 673 (1998). Because the evidence of the marijuana dealings was relevant, was offered for a proper purpose, and was not substantially more unfairly prejudicial than probative, the evidence was properly admitted. The trial court did not abuse its discretion by admitting the evidence.

B. HEARSAY

Defendant also contends that the trial court erred by admitting the testimonies of officer Karen Belluomini and detective Richard Sperando regarding statements Bhattal made to them accusing defendant of stealing a rental vehicle, which was the vehicle defendant was in when he was arrested. Apparently, the vehicle had been rented under Bhattal's name on March 26, 2007, and when defendant and Gonzalez did not return by March 29th, he reported the vehicle stolen. Specifically, defendant contends this testimony constituted impermissible hearsay and violated his right to confrontation. Because defendant never objected on confrontation clause grounds below, our review of that issue is for plain error affecting substantial rights. *Hawkins*, 245 Mich App at 447.

In the proceedings below, defendant filed a motion in limine to exclude both Sperando's and Belluomini's testimonies. The prosecution countered that the testimony was admissible to show the existence of a relationship between Bhattal and defendant and to show Bhattal's consciousness of guilt. The trial court denied defendant's motion. Subsequently, Belluomini testified at trial that Bhattal had reported the vehicle stolen on the evening of March 29, 2007. She testified that Bhattal stated that he had rented the vehicle and had expected two gentlemen to return and pick him up on March 28th at 11 p.m. Instead, Belluomini indicated that Bhattal told her that those individuals had failed to appear with the vehicle to retrieve him. The following colloquy then occurred:

Prosecutor. Okay, did you ask him about the individuals?

Witness. Yes, I did.

Prosecutor. All right, and what, if anything, did he say about the individuals?

Witness. He stated one was a business partner and he didn't know who the other gentleman was.

Prosecutor. And did you ask him for the business partner's name?

Witness. Yes.

Prosecutor. And what did he indicate to you?

Witness. He couldn't recall who it was.

* * *

Prosecutor. Okay. Did you -- did you indicate anything to him when you -- you said it struck you as odd, did you indicate anything to the defendant? Did you tell him anything?

Witness. I stated that I was making an official police document, a report, and subjects are -- they could be arrested for making false police reports.

* * *

Prosecutor. And what did he -- how did he respond to that?

Witness. He was a little nervous and then that's when he became forthcoming with the information.

Prosecutor. All right, and what was the name of the -- at some point did he remember the name of his business partner?

Witness. Yes.

Prosecutor. And what did he say the name of his business partner was?

Witness. Andon Filipi.

Prosecutor. All right, and did you ask him if he knew the other person's name?

Witness. Yes.

Prosecutor. All right, and what, if anything, did he tell you?

Witness. It was Anthony Gonzalez.

Prosecutor. All right, did you ask him for a description?

Witness. Yes.[5]

We agree with defendant that at least a portion of the admitted testimony constituted inadmissible hearsay. Generally, hearsay is not admissible. MRE 802. "'Hearsay' is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." MRE 801(c). Accordingly, a statement that is not offered for the truth of the matter asserted is not hearsay. *People v Mesik (On Reconsideration)*, 285 Mich App 535, 540; 775 NW2d 857 (2009).

[5] Sperando's testimony regarding what Bhattal told him regarding the rental vehicle was substantially similar.

A large portion of the testimony elicited was not hearsay because it was not offered to prove the truth of the matter asserted. Certainly the prosecution was not trying to prove that defendant stole the car. Rather, the majority of the testimony regarding Bhattal's statements to Belluomini were offered to show that Bhattal was lying and was conscious of his guilt. Therefore, those statements were not hearsay and were properly admitted. Nonetheless, the portion of the testimony excerpted verbatim above, which identifies defendant as Bhattal's business partner, does constitute impermissible hearsay. It cannot be said that the answer to the question, "And what did he say the name of his business partner was?," demonstrates that Bhattal was lying or was conscious of guilt. That much had already been established during the prosecution's examination. Rather, the portion of the testimony that simply identifies defendant as Bhattal's business partner is testimony offered for no other purpose than to prove the truth of the matter asserted: that Bhattal and defendant were business partners. The prosecution's contention that this testimony was not really offered for truth, but to show the existence of a relationship between coconspirators, is unavailing because the existence of the relationship in this case is synonymous with the truth in fact.

Accordingly, the trial court erred by permitting Belluomini to testify regarding defendant's identity as Bhattal's business partner. Similarly, because defendant was not available for cross examination and because Bhattal's statements were testimonial, defendant's confrontation rights were violated. See *Crawford v Washington*, 541 US 36; 124 S Ct 1354; 158 L Ed 2d 177 (2004). Nonetheless, defendant has failed to demonstrate that the error was outcome determinative or that the error affected his substantial rights in light of the overwhelming evidence against him. See *supra* Section II.A.i. Thus, relief is not mandated on this basis.

C. MOTION TO SUPPRESS

Defendant also asserts that the trial court erred by denying his motion to suppress the admission of the cocaine. In defendant's view, the seizure was unlawful because the initial traffic stop was illegal, as it was mere pretext, and the subsequent inventory search of the vehicle unreasonable, as it allegedly did not comply with departmental policy. We disagree. A trial court's findings of fact at a suppression hearing are reviewed for clear error and its ultimate ruling is reviewed de novo. *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005).

The Michigan Constitution and the United States Constitution guarantee that a person shall be free from unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11. "[N]ot all searches are constitutionally prohibited, only unreasonable searches." *People v Dagwan*, 269 Mich App 338, 342; 711 NW2d 386 (2005). Generally, searches or seizures conducted without a warrant are unreasonable per se. *Id.* However, one of the recognized exceptions to requiring a search warrant is for inventory searches that are executed in accordance with departmental regulations. *People v Toohey*, 438 Mich 265, 271; 475 NW2d 16 (1991). Moreover, an officer's decision to stop a vehicle is valid if the officer had probable cause to believe a violation of the traffic laws has occurred, even if the stop is a pretext for some other reason. *People v Davis*, 250 Mich App 357, 363; 649 NW2d 94 (2002).

Here, defendant's vehicle was stopped after a police officer determined with a laser measurement that defendant's vehicle was traveling above the speed limit. Thus, the officer had probable cause to effectuate a traffic stop and the stop was legal. It is irrelevant that the officer

in this case had an ulterior motive to stop defendant's vehicle. See *Whren v US*, 517 US 806, 813; 116 S Ct 1769; 135 L Ed 2d 89 (1996). The officer had probable cause to believe that defendant's vehicle violated a traffic law and contrary to defendant's argument on appeal, the trial court did not err by denying his request to suppress the evidence on this basis.

We also conclude that the subsequent inventory search of the vehicle was reasonable. The Troy Police Impound Policy states that the police are authorized to impound a vehicle "in the event the driver of a vehicle is arrested and the vehicle is standing upon a highway and there is no other person able to remove the vehicle." Because no one could legally drive the vehicle away—Gonzalez had been arrested for driving without a license and defendant also did not have a valid license—the vehicle would be left "standing upon [the] highway." Thus, the impounding of the vehicle was in accordance with the established policy and was legal. Further, when a vehicle is lawfully impounded, police have the authority to inventory the contents of the vehicle, but "the validity of the inventory search depends on the whether there were standardized criteria, policies, or routines regulating how inventory searches were to be conducted." *People v Poole*, 199 Mich App 261, 265; 501 NW2d 265 (1993). The record reflects that departmental policy was followed in this case and defendant does not explain why or how the search was not consistent with the police department's policies. A defendant may not merely assert a claim of error and then leave it to this Court to search for factual or legal support for the claim. *People v Martin*, 271 Mich App 280, 315; 721 NW2d 815 (2006). Consequently, any claim by defendant questioning the validity of the inventory search itself is abandoned. See *id.* The trial court did not err by denying defendant's motion to suppress.

D. CUMULATIVE ERROR

In this unpreserved issue, defendant contends that the prejudicial effect of the cumulative errors in this case requires reversal. We disagree. As noted, defendant established the existence of two errors: The admission of evidence relating to the August 2006 incident and the admission of hearsay testimony identifying defendant as Bhattal's business partner. "In order for cumulative evidentiary error to mandate reversal, consequential errors must result in substantial prejudice that denies the aggrieved party a fair trial." *Lewis v LeGrow*, 258 Mich App 175, 200; 670 NW2d 675 (2003). "In order to reverse on the grounds of cumulative error, the errors at issue must be of consequence [and the] effect of the errors must have been seriously prejudicial in order to warrant a finding that defendant was denied a fair trial." *People v Knapp*, 244 Mich App 361, 388; 624 NW2d 227 (2001). Here, the admission of the hearsay evidence identifying defendant as Bhattal's business partner was redundant of other evidence on the record demonstrating the relationship between the two. Thus, the effect of this error was non-consequential. Moreover, given that the evidence of defendant's guilt was substantial we cannot conclude that a reasonable juror would have voted to acquit defendant if the errors had not occurred. Thus, the effect of the two errors does not require reversal.

III. SENTENCING

Defendant finally asserts that the trial court erred when it failed to articulate the reasons why it did not find any substantial and compelling reasons for a downward departure from the sentencing guidelines. We disagree. The imposition of a sentence is reviewed for an abuse of discretion. *People v Underwood*, 278 Mich App 334, 337; 750 NW2d 612 (2008).

At the outset, we note that defendant never raised this issue in his statement of questions presented, as required by MCR 7.212(C)(5). Therefore, this issue is waived and this Court need not consider it. *Unger*, 278 Mich App at 262. Moreover, because defendant never objected to the trial court's failure to explicitly state why it thought no substantial and compelling reasons existed, the matter is not properly before this Court. *People v Francisco*, 474 Mich 82, 91 n 8; 711 NW2d 44 (2006) (noting that if a sentence is within the appropriate guidelines range then it can be appealed only if the issue was raised (1) at sentencing, (2) in a motion for resentencing, or (3) in a motion to remand). Nonetheless, had the issue been properly presented and preserved, we would affirm defendant's sentence. If a minimum sentence is within the appropriate guidelines range, as it is here, then we must affirm the sentence absent an error in scoring or inaccurate information relied upon by the sentencing judge. MCL 769.34(10). We see no such errors here and defendant's argument provides no basis for relief.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Brian K. Zahra
/s/ Kirsten Frank Kelly