

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STANLEY E. DAVIS,

Defendant-Appellant.

UNPUBLISHED
November 4, 1997

No. 195637
Oakland Circuit Court
LC No. 95-141101-FH

Before: Jansen, P.J., and Doctoroff and Gage, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of felonious assault with a dangerous weapon, MCL 750.82; MSA 28.277, and as an habitual offender, second offense, MCL 769.10; MSA 28.1082. Defendant was sentenced to 32 to 48 months' imprisonment for felonious assault with a car. That sentence was vacated, and defendant was sentenced as an habitual offender to 48 to 60 months' imprisonment. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court made improper comments to the jury. However, defendant failed to object to these alleged improper comments and these issues were not preserved for appeal absent manifest injustice. *People v Sharbnow*, 174 Mich App 94, 99; 435 NW2d 772 (1989). A trial judge has wide discretion on matters of trial conduct. Only if the court's conduct pierces the veil of judicial impartiality will a defendant's conviction be reversed on this basis. *Id.* The appropriate test is whether the trial court's conduct or comments "were of such a nature as to unduly influence the jury and thereby deprive the appellant of his right to a fair and impartial trial." *Id.* After reviewing the entire record, we find that the court's comments were not improper and did not unduly influence the jury to the extent that they deprived defendant of a fair trial. Therefore, no manifest injustice will result from our failure to fully review this issue.

Next, defendant argues that the trial court's calling of a rebuttal witness and subsequent questioning of that witness was prejudicial and denied him due process. Because defendant also failed to object, this issue has not been preserved for appeal absent manifest injustice. *Sharbnow, supra*. The trial court's behavior was admittedly unusual, since the trial court, rather than the prosecution,

called the victim to the stand as a rebuttal witness after the defense had rested. The trial court did not merely question the victim to clarify his testimony but, instead, called the victim to the stand to state “his version of the events,” which contradicted defendant’s testimony.

However, we find that the trial court’s conduct was not partial or prejudicial and did not influence the jury to the detriment of defendant’s case. The questions themselves did not indicate any partiality to the prosecution or the victim. See *People v Cheeks*, 216 Mich App 470, 480; 549 NW2d 584 (1996). Furthermore, the prosecution could have called the victim to rebut the testimony since it addressed an issue raised by defendant during his direct testimony - that the victim stopped his car to provoke defendant. See *People v Figgures*, 451 Mich 390, 399; 547 NW2d 673 (1996). Accordingly, defendant was not deprived of due process or a fair and impartial trial.

Defendant next maintains that he was denied a fair trial when the trial court allowed the prosecutor to introduce evidence of other bad acts despite denying the prosecution’s in limine motion to submit such evidence. We disagree with defendant’s position. No order was filed denying the prosecutor’s motion in limine. An order does not become effective until reduced to written form. *Davenport v City of Grosse Pointe Farms Bd of Zoning Appeals*, 210 Mich App 400, 405; 534 NW2d 143 (1995). Moreover, defendant objected only to the introduction of testimony from defendant’s former girlfriend regarding telephone calls defendant made to her after the assault upon the victim, thus properly preserving this issue only for review by this Court.

There are substantial limits on the admissibility of evidence concerning other bad acts. MRE 404(B); *People v VanderVliet*, 444 Mich 52; 508 NW2d 114 (1993) modified 445 Mich 1205 (1994). However, the testimony in question assisted in showing that the incident was not merely a routine traffic accident. The jury was entitled to hear the “complete story,” even if the antecedent event incidentally involves the commission of another crime. *People v Sholl*, 453 Mich 730, 742; 556 NW2d 851 (1996). Without testimony regarding the prior assault and harassing telephone calls, a jury would not have all of the facts it needed to determine whether the car collision was a mere traffic accident or a purposeful act. Therefore, the trial court did not abuse its discretion in allowing this testimony into evidence.

Finally, defendant contends that his sentence was not proportionate because the sentencing court exceeded the maximum set forth in the sentencing guidelines and miscalculated the sentencing guideline score. However, the guidelines do not apply to habitual offender convictions. *People v Lugo*, 214 Mich App 699, 713; 542 NW2d 921 (1995). Moreover, a sentence should be proportionate to the seriousness of the circumstances surrounding the offense and the offender. *Id.* In light of the seriousness of the circumstances surrounding defendant’s crime and his conduct during trial, we find no abuse of discretion and believe that the sentence was proportionate to this offense and this offender.

Affirmed.

/s/ Kathleen Jansen
/s/ Martin M. Doctoroff
/s/ Hilda R. Gage