

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHAWN E. NEPSEY,

Defendant-Appellant.

UNPUBLISHED

March 20, 1998

No. 197666

Recorder's Court

LC No. 95-009099

Before: Gribbs, P.J., and Cavanagh and Saad, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions for second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to a term of eighteen to forty years imprisonment for the second-degree murder conviction and a consecutive term of two years in prison for the felony-firearm conviction. We affirm.

I

Defendant argues that the trial court abused its discretion by failing to grant defendant's motion to quash the information on the charge of first-degree murder, MCL 750.316; MSA 28.548, because there was insufficient evidence to support the charge. However, we find it unnecessary to determine whether the district court abused its discretion in binding defendant over on the first-degree murder charge because any error is harmless. The trial court, sitting as the trier of fact, convicted defendant of a lesser offense. Accordingly, concerns regarding compromise verdicts are inapplicable here. Defendant does not claim that the evidence was insufficient to support the convictions of second-degree murder and felony-firearm. See *People v Edwards*, 171 Mich App 613, 619-620; 431 NW2d 83 (1988). Accordingly, we find no error requiring reversal.

II

Defendant next claims that the trial court abused its discretion in refusing to permit defense counsel from introducing evidence of the victim's violent character in support of his claim of defense of

others. The decision whether to admit evidence is within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *People v Lugo*, 214 Mich App 699, 709; 542 NW2d 921 (1995).

After reviewing the record, we conclude that the trial court erred in excluding the witness' testimony on the basis that it was hearsay. The evidence was not offered to prove the truth of the matter asserted, i.e., that the victim did in fact have a violent reputation, but rather to establish that defendant had been informed of the victim's reputation for violence. Evidence of a victim's character for violence is admissible where the defendant claims that he acted in defense of others. See MRE 404(a)(2); MRE 405; see also *People v Fortson*, 202 Mich App 13, 19; 507 NW2d 763 (1993) (stating that evidence of a victim's character for violence is admissible where the defendant claims that he acted in self-defense).

However, we find that the error was harmless. Pursuant to MCL 769.26; MSA 28.1096, a verdict shall not be reversed or a new trial granted on the basis of the improper rejection of evidence unless it appears that the error resulted in a miscarriage of justice. Where there is overwhelming evidence of a defendant's guilt, there is no affirmative evidence of a miscarriage of justice. *People v Dumas*, 454 Mich 390, 409; 563 NW2d 31 (1997). In the instant case, the overwhelming evidence of defendant's guilt was presented, and there was no evidence that supported defendant's theory that he was acting in defense of others when he fired the gun.

III

Finally, defendant argues that the sentencing guidelines were erroneously scored. However, a putative error in the scoring of sentencing guidelines is not a basis upon which an appellate court can grant relief. *People v Polus*, ___ Mich ___, ___; ___ NW2d ___ (Docket No. 108010, issued 2/5/98), slip op pp 12-13; *People v Mitchell*, 454 Mich 145, 175-178; 560 NW2d 600 (1997). Where, as here, the sentence is not disproportionate, there is no basis for relief on appeal. See *Polus*, *supra* at 10.

Affirmed.

/s/ Roman S. Gribbs
/s/ Mark J. Cavanagh
/s/ Henry William Saad