STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DOMINGO A. SIERRA,

Defendant-Appellant.

UNPUBLISHED
November 30, 2001

No. 220908
Oakland Circuit Court
LC No. 97-155085-FC

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

PER CURIAM.

Defendant appeals his jury trial convictions for possession with intent to deliver more than 650 grams of a controlled substance (cocaine), MCL 333.7401(2)(a)(i), and felony-firearm, MCL 750.227b. We affirm.

Defendant asserts that the trial court committed clear error by allowing evidence of statements he made to police on three occasions to be presented to the jury, asserting that his knowledge of English was insufficient for him to make a voluntary, knowing, and intelligent waiver of his *Miranda*[1] rights. We disagree.

We review de novo the trial court's resolution of this issue, but review the factual findings for clear error while deferring to the trial court's resolution of credibility questions. *People v Cheatham*, 453 Mich 1, 30; 551 NW2d 355 (1996). We consider the question in the totality of all of the circumstances surrounding the interrogation in which the rights were allegedly waived, and the burden is on the prosecutor to prove that waiver was proper by a preponderance of the evidence. *Id*. at 27.

Here, the trial court found that defendant's waiver of his *Miranda* rights on each occasion was knowing, intelligent, and voluntary, and we find no clear error in this ruling, as it was based on a good deal of evidence, and on the trial court's resolution of credibility questions. The trial court considered the testimony of the officer to whom the statements were made, who testified that he not only read defendant his *Miranda* rights each time, but explained them to him, and questioned him to make sure he understood them. The officer testified that defendant did appear

[1] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

to understand and that, although defendant's English was not perfect, defendant demonstrated an ability to understand most of what was said to him and to communicate during their conversations. The trial court also had an opportunity to view the tape of two of the three occasions on which the warnings were given, and the ensuing interviews, and to form its own opinion regarding the level of defendant's understanding. The court also had the opportunity to hear defendant, who testified at the hearing on suppression of the statements, and to make credibility determinations regarding his statements. Given all the evidence considered, and our deference to the trial court's credibility determinations, we cannot say that it clearly erred in determining that defendant understood the *Miranda* warnings, and intelligently and voluntarily waived his rights.

Defendant also asserts that the trial court erred in admitting evidence that he had sold cocaine on several occasions during the week in which he was arrested, and also that the car mechanic with him on the premises where the cocaine was found at the time of his arrest expected defendant to pay him for the vehicle repairs with cocaine. Again, we disagree. We review a trial court's rulings on admission of evidence for abuse of discretion, *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998), and found none here. The evidence was not admitted as evidence of other bad acts evidence; rather, it was admitted as part of the res gestae of the crime with which he was charged, to prove one of the elements, his intent, as manifested by his actions, to distribute the cocaine. Such res gestae evidence has long been recognized as being properly admissible. See *People v Savage*, 225 Mich 84, 86; 195 NW 669 (1923). The evidence was not inadmissible on the ground that it implies "that defendant had been involved in other criminal transactions," as there were no such other criminal transactions at issue. *People v McDaniel*, 99 Mich App 582, 584; 297 NW2d 724 (1980). The trial court carefully considered the standard required by MRE 404(b) governing admission of prejudicial character evidence, took care to exclude any evidence of drug deals in which defendant had participated on earlier occasions when the cocaine involved in the instant case was not allegedly under his control, and excluded evidence that defendant may have paid his mechanic with cocaine on earlier occasions. It is true that the mechanic, after the court ruled that this evidence was not admissible, volunteered this information at a time when it was not directly responsive to any question. No objection was made to this unsolicited statement, however, and under the plain error standard of *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999), it does not provide a ground for reversal.

Similarly, defendant now complains for the first time on appeal that the mechanic testified briefly regarding a friendship or romantic relationship between defendant and the mechanic's fourteen-year-old daughter, which he asserts was prejudicial, given that defendant was then almost twice her age. Again, the *Carines* standard was not met. The references to any relationship between defendant and the mechanic's daughter were fleeting and fairly innocuous, and the trial court took care to exclude any prejudicial evidence on this subject, including photographs of defendant with the young woman.

Finally, defendant argues that the trial court erred in denying his motion to quash the search warrant. Specifically, defendant claims error because the affidavit contained false and misleading information, including references to drug transactions conducted by another person with a similar name. We disagree. To prevail on this claim, defendant must show by a preponderance of the evidence that the affidavit contained false statements, made with

knowledge of their falsity or with reckless disregard for their truth, and that the false material was necessary to establish probable cause for issuance of the warrant. *People v Coy*, 243 Mich App 283, 314-315; 620 NW2d 888 (2000); *People v Stumpf*, 196 Mich App 218, 224; 492 NW2d 795 (1992).

Here, we agree with the trial court that the contents of the affidavit without the disputed statements was sufficient to establish probable cause for the issuance of the warrant. The affidavit included statements from confidential informants that drugs were being kept on the premises, that the confidential informants had purchased them there and saw them kept in abandoned vehicles on the property, and that a controlled buy of cocaine had just taken place at the premises. With these overwhelming independent grounds for the issuance of the warrant, probable cause existed without the erroneous references to the person with whom police confused defendant.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Martin M. Doctoroff
/s/ Kathleen Jansen