STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 18, 2002
v	No. 231976 Oakland Circuit Court
SHELBY LEE JONES, Defendant-Appellant.	LC No. 00-171024-FH

Before: Holbrook, Jr., P.J., and Gage and Meter, JJ.

PER CURIAM.

Defendant appeals by right from his convictions by a jury of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv), and possession of less than twenty-five grams of heroin, MCL 333.7403(2)(a)(v). The trial court, applying the habitual offender penalty provisions of MCL 333.7413(2), sentenced him to consecutive terms of three to forty years' imprisonment for the cocaine conviction and 1½ to 8 years' imprisonment for the heroin conviction. We affirm.

The prosecutor presented several police officers as witnesses. Sergeant Robert Miller of the Pontiac Police Department testified as follows: On January 13, 2000, he, along with other officers, executed a narcotics search warrant at the downstairs apartment of a two-story apartment house at 510 South Paddock Street in Pontiac. As he and his coworkers were securing the apartment, they heard someone yelling for help in the upstairs apartment. They entered the upstairs apartment, saw defendant hanging from a window ledge in the southeast bedroom, and pulled defendant into the room. From outside the house they recovered a package containing approximately twenty-five grams of crack cocaine. Miller testified that based on the amount of the cocaine and the size of the rocks, the cocaine was not meant for personal use. The police also recovered from outside the house a packet containing marijuana and a packet containing approximately one-and-one-half grams of heroin. Miller testified that the window from which defendant was hanging was the window closest to South Paddock Street, and he circled a window on a photographic exhibit in accordance with this testimony.

Officer Jeremy Pittman testified that he participated in the raid of the apartment building on January 13. He stated that after hearing the yelling and proceeding upstairs, he saw a person, Anthony Lewis, in the bedroom adjacent to the bedroom from whose window defendant was

hanging. Pittman testified that Lewis was lying facedown on the bed and that when he got up, he could barely walk because of an injury to his leg.

Officer Brian Wood testified as follows: He searched the upstairs apartment of 510 South Paddock Street on January 13 after a search warrant was obtained for that apartment. He found a large amount of marijuana loose on the coffee table in the living room. In the corner of the living room he found approximately two hundred dollars' worth of crack cocaine and five envelopes each containing approximately ten dollars' worth of heroin. The cocaine and heroin were under a plate that looked as if it had been thrown into the corner. On the bar in the living room he found razor blades and "lotto folds that were pre-cut to package heroin[]." Wood also found a person, Dolfus Lee, lying face down on the floor in the living room.

Wood agreed with Miller that when initially executing the search warrant for the downstairs apartment on January 13, the officers made a great deal of noise in announcing their presence. He estimated that about ten seconds after their entry into the downstairs apartment, they heard the scream for help from above.

Officer Kevin Braddock testified as follows: He assisted in the search of the upstairs apartment on January 13. In the southeast bedroom, he found in a dresser drawer a loaded "smaller Derringer type handgun." In that same drawer he found a small, driver's-license-type photograph of defendant. On the bed and on the dresser he found correspondence addressed to defendant. Braddock also found a cellular telephone on the dresser. This telephone rang while Braddock was in the bedroom. He answered it without identifying himself, and the person on the other end of the line stated that he wanted "seven." Based on his experience and training, Braddock believed the person was referring either to seven rocks of crack cocaine or seven packets of heroin. Braddock stated into the telephone, "Yeah, I'm straight," and the person on the other end of the line stated, "Okay. I'll be over in 10 minutes."

Officer Jason Teelander testified as follows: He was assigned to outside security at 510 South Paddock Street on the day the search warrants were executed. Immediately after the entry team entered the downstairs apartment, he saw an arm outside an upstairs window and saw something flying through the air. Immediately thereafter or nearly simultaneously, he saw defendant standing at the window in question. Defendant then attempted to climb out of the window and began yelling for help because he feared falling. Teelander retrieved the items that he had seen flying through the air; the items were the drugs as described by Miller. Teelander testified that based on his experience and training, the cocaine, because of its quantity and packaging, was not meant for merely personal use but was meant for distribution. Teelander testified that he was certain that the window out of which the drugs flew was the window that Miller had circled on a photographic exhibit, i.e., the southeast window closest to South Paddock Street.

Teelander acknowledged that the photograph of defendant that Braddock found in the dresser drawer had not been preserved as evidence for trial.

Defendant testified in his own behalf as follows: On January 12, 2000, he got out of jail[1] and went directly to the home of a female friend who lived in the upstairs apartment at 510 South Paddock Street. He wanted the friend to cut his hair. He spent the night at her apartment. At some point in the afternoon on January 13, he heard police coming up the stairs and he went out the window. He did this because he was scared that he would get in trouble with his parole agent if she found out that he had been in a house in which drug activity was occurring. He acknowledged that he knew that the other people in the house sold drugs out of the house, but he denied possessing any drugs or guns himself.[2]

Defendant also testified that instead of there being two bedrooms and one storage room along the south side of the upstairs apartment as earlier testified to by Pittman, there were actually *three* bedrooms and a storage room, as well as a living room, along that side of the apartment.

The prosecutor called Teelander as a rebuttal witness to clarify the configuration of the rooms on the south side of the upstairs apartment. Teelander testified, consistent with defendant's testimony, that the south side held three bedrooms, a narrow living room, and a small storage room. Teelander further testified that the living room did not have any windows on the south side of the apartment, where the bar was located. He indicated that the window closest to South Paddock Street on the south side of the house was the window in the southeast bedroom.[3]

The jury acquitted defendant of two counts of possessing a firearm during the commission of a felony and of one count of being a felon in possession of a firearm. The jury convicted defendant of one count of possession with intent to deliver less than fifty grams of cocaine and one count of possession of less than twenty-five grams of heroin.

On November 22, 2000, defendant moved for a new trial, arguing that Teelander offered materially false testimony in his rebuttal when he testified that the living room of the upstairs apartment at 510 South Paddock Street did not have a window facing the south side of the building. Defendant attached an affidavit and photographs demonstrating that the living room *did* in fact have such a window, located over the bar on which drug paraphernalia had been found. Defendant contended that Teelander's mistaken testimony substantially affected the outcome of the trial, because Teelander also testified, with certainty, that the drugs he saw flying from the house came the southeast window closest to Paddock Street, which would in actuality have been the living room window. Another person, Dolfus Lee, was found lying in the living room, and defendant contended that without Teelander's mistaken testimony, the jurors might have concluded that Lee threw the drugs out of the living room window.

The prosecutor filed a responsive brief in which it acknowledged that the pictures submitted with defendant's motion "seem to conflict with Officer Teelander's testimony at trial

[1] The parties stipulated that defendant had been incarcerated from October 6, 1999, to January 12, 2000.

[2] The parties stipulated that the police found $478 in defendant's pocket at the time of his arrest.

[3] As noted, defendant was found hanging from the window of the southeast bedroom.

regarding the lack of a window in the living room." The prosecutor contended, however, that a new trial was not warranted because (1) the evidence of a window was not "newly discovered" but could have been brought forth at trial; and (2) the evidence did not materially affect the outcome of the case, given Teelander's testimony that immediately after seeing the drugs flying from a window, he saw defendant standing in the same window.

The hearing on defendant's motion occurred on December 7, 2000. Defense counsel reemphasized the importance of Teelander's mistaken rebuttal testimony, arguing that given the timing of the events, the jurors would likely have found defendant not guilty if they had not heard the false testimony. Counsel argued that given that defendant was pulled into the bedroom window just five to ten seconds after the raid:

> no jury in their right mind could find that [defendant] could have possibly be[en] the person that threw the drugs. He was in a separate room. In seconds he would have had to throw the drugs, run around a wall, be at the exact same window again, transverse somehow through a wall and then hang from a window.[4] It's physically impossible. A jury couldn't think that way, no one could.

The trial court denied defendant's motion, stating that the issue of a living room window was "a collateral issue." The court stated that "[e]ven if there is a window in the living room and Te[e]lander testified that there wasn't, if that is to be classified as an error in the trial it certainly is not in my opinion an error that rises to the standard that has to be met with regard to a new trial."

On appeal, defendant first argues that the trial court erroneously allowed hearsay evidence into the trial by allowing Braddock to testify about statements received from an unknown caller on the cellular telephone in the southeast bedroom. However, defendant did not object to Braddock's testimony on this basis at trial, and this issue is therefore not preserved for appellate review. See *People v Aldrich*, 246 Mich App 101, 113; 631 NW2d 67 (2001) (to preserve an evidentiary issue for appeal, a party must object below on the same grounds it asserts on appeal). We will review solely for plain error. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). To warrant relief under the plain error doctrine, defendant must establish a clear or obvious error that likely affected the outcome of the case. *Id*. We discern no clear or obvious error here, because the statements were admissible as statements against the declarant's penal interest. See *People v Lucas*, 188 Mich App 554, 578; 470 NW2d 460 (1991). Reversal is unwarranted.

Next, defendant argues that the prosecutor presented insufficient evidence to support his conviction of possession with intent to deliver cocaine. In reviewing claims of insufficient evidence, we view all the evidence in the light most favorable to the prosecutor to determine whether a rational trier of fact could have found the elements of the crime established beyond a reasonable doubt. *People v Turner*, 213 Mich App 558, 565; 540 NW2d 728 (1995). We reject defendant's insufficiency argument. Indeed, defendant's conviction was amply supported by the

---

[4] We note that contrary to defense counsel's implication in this argument, Teelander's testimony implied that defendant climbed out of the same window from which the drugs were thrown.

evidence that (1) defendant appeared in a window almost simultaneously after cocaine was thrown from the same window, (2) defendant then tried to escape from the house, (3) the cocaine was packaged in such a way that it was not meant for personal use but rather was meant for distribution, and (4) a caller on a cellular telephone found in the room where defendant was located and next to correspondence addressed to defendant expressed a desire to purchase drugs. Given this evidence, no error occurred.[5]

Finally, defendant argues that the trial court erred by allowing Teelander's rebuttal testimony.[6] Defendant contends that this testimony was improper because it "did not refute any issue raised by defendant," "was not a new issue," and "did not conform with allowable rebuttal testimony, but simply allowed the prosecution to tidy up an inconsistency that, if true, would have demanded acquittal." However, defendant did not object to the admission of Teelander's testimony at trial. Therefore, we review this issue solely for plain error. *Carines, supra* at 763. To warrant relief, defendant must demonstrate a clear or obvious error that likely affected the outcome of the case. *Id*. We discern no clear or obvious error in the admission of Teelander's testimony. Indeed, the prosecutor properly called Teelander to clarify the layout of the house because defendant testified differently about the layout than did earlier prosecution witnesses. Moreover, we simply cannot say that Teelander's testimony, even if mistaken, likely affected the outcome of the case, given the additional testimony that (1) immediately after drugs were thrown from a window or even simultaneously with drugs being thrown from the window, defendant appeared in the window; (2) defendant tried to escape from the house; and (3) a person called and asked for drugs on a cellular telephone located next to correspondence addressed to defendant. Under these circumstances, even if the jurors had been informed that the southern window closest to South Paddock Street was the living room window, they likely would have concluded that Teelander was simply mistaken in testifying that the drugs were thrown from the window closest to Paddock Street. Defendant has not established entitlement to relief under the plain error doctrine.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Hilda R. Gage
/s/ Patrick M. Meter

---

[5] Although defendant does not explicitly argue the issue on appeal, we additionally note that the prosecutor presented sufficient evidence to support the heroin possession conviction.

[6] We note that defendant does not contend on appeal that the trial court erred by denying his motion for a new trial.