

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIE L. PAGE,

Defendant-Appellant.

UNPUBLISHED
October 20, 1998

No. 201027
Oakland Circuit Court
LC No. 96-149259 FH

Before: Hoekstra, P.J., and Cavanagh and O'Connell, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of unlawful possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and attempting to disarm a police officer, MCL 750.92; MSA 28.287; MCL 750.479b(2)(a); MSA 28.747(2)(a). As a controlled substance second offender, defendant was subject to double penalty pursuant to MCL 333.7413(2); MSA 14.15(7413)(2). The trial court sentenced defendant to seven to forty years' imprisonment for the possession with intent to deliver conviction, second offense, and to a consecutive term of two to five years' imprisonment for the attempt to disarm a police officer conviction. Defendant now appeals as of right. We affirm.

I

Defendant first argues on appeal that the trial court abused its discretion in admitting Sergeant Keelty's expert testimony regarding the profile of a drug dealer. Defendant contends that the prosecution impermissibly used the drug dealer profile evidence as substantive evidence of his guilt, contrary to *People v Hubbard*, 209 Mich App 234; 530 NW2d 130 (1995). However, although defendant objected to the trial court's decision to qualify Sergeant Keelty as an expert in drug trafficking and investigation, defendant failed to object on the basis that her testimony constituted improper drug profile evidence. Because defendant did not object to the admission of this evidence below, our review of this issue is only for manifest injustice. *People v Ramsdell*, ___ Mich App ___, ___; ___ NW2d ___ (Docket No. 197822, issued 6/23/98).

After a thorough review, we are not persuaded that the error, if any, resulted in manifest injustice. Although defendant testified that he did not use crack cocaine, the police found nine individually wrapped rocks of cocaine inside defendant's underwear. Officer Miller testified that the cocaine was in "corner ties," which he described as a common technique used by drug dealers to package crack cocaine. Under these circumstances, even without Sergeant Keelty's testimony, the jury could reasonably infer that defendant was guilty of possession with intent to deliver cocaine.

II

Next, defendant contends that the trial court abused its discretion in admitting evidence of his prior arrest for resisting and obstructing a police officer. We review the trial court's decision to admit or exclude evidence for an abuse of discretion. *People v Howard*, 226 Mich App 528, 551; 575 NW2d 16 (1997). This Court will find an abuse of discretion only when an unprejudiced person, considering the facts on which the trial court acted, would say there is no justification or excuse for the ruling made. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996).

MRE 404(b)(1) provides in pertinent part:

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, identity, or absence of mistake

Evidence of prior acts may be admissible where (1) the evidence is offered for a proper purpose, (2) the evidence is relevant under MRE 402 as enforced through MRE 104(b), and (3) the probative value of the evidence is not substantially outweighed by unfair prejudice. The trial court may, upon request, provide a limiting instruction to the jury. *People v Starr*, 457 Mich 490, 496; 577 NW2d 673 (1998).

In the present case, the trial court ruled that the evidence was relevant to show that defendant intended to disarm the police officers, as opposed to accidentally grabbing their guns during the scuffle. We find no abuse of discretion. Pursuant to MRE 404(b), evidence of other acts is admissible to show intent. Although defendant complains that the evidence is prejudicial, all evidence offered by the parties is "prejudicial" to some extent. See *People v Mills*, 450 Mich 61, 75; 537 NW2d 909 (1995). We do not find that the probative value of the evidence is substantially outweighed by the danger of unfair prejudice. See *id.*; MRE 403.

III

Finally, defendant argues that he is entitled to reversal because the trial court inserted the wrong offense into the 404(b) cautionary instruction it read to the jury. The trial court instructed the jury as follows:

You have heard evidence that was introduced to show that the defendant committed crimes for which he is not . . . on trial. If you believe this evidence, you must be very careful only to consider it for certain purposes. You may only think about *whether this evidence tends to show that the defendant specifically meant to deliver cocaine to another person*; that the defendant knew that the thing found in his possession were -- what they were; that defendant acted purposefully, that is, not by accident or mistake or because he misjudged the situation; that the defendant used a plan, system or characteristic scheme that he has used before or since.

You must not consider this evidence for any other purpose. For example, you must not decide that it shows that the defendant is a bad person or that he is likely to commit crimes. You must not convict the defendant here because you think he is guilty of other bad conduct. [Emphasis added.]

It is obvious that the trial court referred to the wrong offense in this instruction. However, defendant's failure to object to the instruction at trial and expression of satisfaction with it waives error unless relief is necessary to avoid manifest injustice. See *People v Shaneberger*, ___ Mich App ___, ___; ___ NW2d ___ (Docket No. 200499, issued 9/18/98), slip op p2; *People v Torres (On Remand)*, 222 Mich App 411, 423; 564 NW2d 149 (1997). We find no manifest injustice here, as we fail to see how defendant was prejudiced by the trial court's misstatement. The only prior acts evidence presented to the jury pertained to defendant's prior altercation with the police. Thus, if the jury followed the instruction, it would have rejected the evidence as irrelevant because it was unrelated to the charge of delivery of cocaine.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Peter D. O'Connell