

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EMANUEL MAURICE BROWN,

Defendant-Appellant.

UNPUBLISHED

July 2, 1996

No. 179782

LC No. 93-008307

Before: Young, P.J., and Holbrook and Ernst,* JJ.

PER CURIAM.

Defendant was convicted by jury of voluntary manslaughter, MCL 750.321; MSA 28.553, possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and receiving and concealing a stolen firearm, MCL 750.535b; MSA 28.803(2). Defendant was sentenced to two years of imprisonment for the felony-firearm conviction to be served prior to concurrent terms of imprisonment of ten to fifteen years for the manslaughter conviction and six to ten years for the receiving and concealing conviction. We affirm.

I

Defendant called the police to report that his girlfriend had been shot by a gunman who mysteriously ambushed defendant's girlfriend after defendant allowed this man to enter his apartment. Later that evening, defendant's neighbor surrendered a handgun to police that defendant asked him to hide. When confronted with this information, defendant explained that he and his girlfriend had been fighting over the fact that he sold drugs. According to defendant, his girlfriend raised a handgun to her head and threatened to kill herself, and defendant unsuccessfully attempted to save his girlfriend from herself. At trial, defendant admitted that he initially lied to the police in order to be with his girlfriend as she recovered from her wounds. He testified that after learning that she was dead, he explained how she was shot accidentally after he attempted to wrestle the gun away from her. Evidence based on

* Circuit judge, sitting on the Court of Appeals by assignment.

testimony from the medical examiner and crime lab expert established that the gun was fired several feet away from the victim's head.

II

Defendant challenges several evidentiary rulings by the trial court. The decision to admit evidence at trial lies within the trial court's discretion. *People v Taylor*, 195 Mich App 57, 60; 489 NW2d 99 (1992).

First, defendant argues that the trial court improperly admitted evidence of defendant's involvement in a prior shooting, claiming that the evidence was irrelevant and prejudicial. We disagree. As required by MRE 404(b), the prosecution moved before trial to introduce this evidence to counter defendant's "accident" defense. Defendant claimed that his girlfriend died of an "accidental" shooting resulting from his struggle to save her. MRE 404(b) specifically allows the admission of prior bad acts to show "absence of mistake or accident." At trial, the prosecution admitted testimony regarding a prior incident wherein defendant fired a gun at a van full of people. Following the presentation of this evidence, the trial court immediately cautioned the jury that the evidence was admitted for the limited purpose of defendant's claim of "accident." The court reiterated this caution when charging the jury before deliberations. Based on our review of the record, we find that the evidence was admitted for a purpose other than propensity, was more probative than prejudicial, and that defendant's interests were protected by the use of limiting instructions. See *People v VanderVliet*, 444 Mich 52, 74-75; 508 NW2d 114 (1993). Accordingly, we find no abuse of discretion.

Second, defendant argues that the admission of fourteen nine millimeter shell casings recovered outside his apartment was irrelevant and prejudicial. Defendant's gun was a nine millimeter gun. The casings were introduced along with many other exhibits recovered during the investigation of the crime scene. These include a box of live ammunition, nine millimeter bullets, found in defendant's kitchen, and one nine millimeter shell casing, recovered from the bedroom where defendant's girlfriend was shot. The record indicates that the single shell casing was linked to defendant's gun. Inasmuch as defendant admitted to struggling with the gun which accidentally caused the death of his girlfriend, this evidence is relevant to the issues involved in the case. Although the fired shell casings may have been prejudicial from defendant's vantage, the evidence was not unfairly prejudicial. See *People v Hoffman*, 205 Mich App 1, 18; 518 NW2d 817 (1994). Accordingly, we find no error.

Finally, defendant challenges the admission of drug paraphernalia that was recovered from defendant's apartment. Defendant admitted at trial that he sold drugs and that before the shooting, he argued with his girlfriend about his drug selling activities. Thus, the evidence was relevant to the issues raised at trial and did not unfairly prejudice defendant. MRE 401, 403.

III

Defendant next argues that the forensic pathologist was not qualified to render an opinion regarding the implications of gunpowder residue or the absence thereof on the victim's body. This

Court reviews the trial court's admission of expert testimony for an abuse of discretion. *People v Christel*, 449 Mich 578, 587; 537 NW2d 194 (1995).

The forensic pathologist testified that, in his opinion, the absence of gunpowder residue on the victim's head indicated that the gun was held at least two to three feet away from the victim's head. Before permitting expert testimony, the trial court must find that the evidence is from a recognized discipline, as well as relevant and helpful to the trier of fact, and presented by a witness qualified by "knowledge, skill, experience, training, or education. . . ." MRE 702; *Christel, supra*, 449 Mich 587. This expert was qualified to render this opinion. He had performed seven to eight hundred autopsies involving gunshot victims, and, as part of his training, this expert observed tests conducted of known weapons to determine gunpowder residue patterns resulting from shooting a weapon at various distances. Thus, the trial court did not abuse its discretion in allowing this expert to testify regarding the absence of gunpowder residue on the victim's head. We find no error.

IV

Defendant lastly argues that the trial court improperly denied his motion for a directed verdict related to the receiving and concealing count because the evidence was insufficient to establish that he knew the gun was stolen. We disagree. When reviewing a motion for a directed verdict, this Court views the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979), cert den 449 US 885; 101 S Ct 239; 66 L Ed 2d 110 (1980) . Guilty knowledge includes constructive knowledge that can be inferred from the surrounding facts and circumstances. *People v Scott*, 154 Mich App 615, 617; 397 NW2d 852 (1986), and a defendant's lack of reasonable explanation can be considered when determining a defendant's guilty knowledge. *People v Salata*, 79 Mich App 415, 422; 262 NW2d 844 (1977).

After reviewing the record, we find that defendant's motion for a directed verdict was properly denied. The prosecution presented evidence that defendant procured an unregistered gun "off the street," and that defendant made no attempt to register it. Defendant testified that he received the gun from a "friend" and was too young to register the gun when he acquired it. As the trial court correctly recognized, the credibility of defendant's explanation was for the jury to determine, and the jury's disregard of it establishes that the evidence was sufficient to support defendant's conviction for receiving and concealing a stolen firearm. *People v Velasquez*, 189 Mich App 14, 16; 472 NW2d 289 (1991).

Affirmed.

/s/ Robert P. Young, Jr.

/s/ Donald E. Holbrook, Jr.

/s/ J. Richard Ernst