STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SILAS SHERROD,

Defendant-Appellant.

UNPUBLISHED
March 18, 1997

No. 186089
Washtenaw Circuit Court
LC No. 94003177-FH

Before: Cavanagh, P.J., and Reilly, and C.D. Corwin,* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of breaking and entering, MCL 750.110; MSA 28.305, and stealing or retaining a financial transaction device without consent, MCL 750.157n(1); MSA 28.354(14)(1). He was sentenced as an habitual offender, fourth offense, to three to ten years' imprisonment for the breaking and entering conviction and two to four years' imprisonment for the financial transaction device conviction. The sentences are to be served concurrently. He appeals as of right, and we affirm.

Defendant first argues that he was denied due process of law because he never pleaded guilty or had a hearing on his habitual offender sentence enhancement. We disagree. MCL 769.13(5); MSA 28.1085(5) does not create a third crime separate from defendant's two crimes, but punishes defendant by enhancing the sentence for his two convictions. Due process is satisfied if the sentence is based on accurate information and if the defendant had a reasonable opportunity at sentencing to challenge the information. *People v Williams*, 215 Mich App 234, 236; 544 NW2d 480 (1996). Here, because of the prosecution's supplemental information, defendant had notice that the prosecution was seeking the penalties provided in MCL 769.12; MSA 28.1084 for fourth-time habitual offenders. Additionally, defendant does not challenge the accuracy of the information regarding his prior convictions. Finally, defendant had a reasonable opportunity to challenge the information either by moving the court to hear evidence as dictated by the statute or merely by objecting at the sentencing. Therefore, defendant was afforded due process under the law.

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

Second, defendant argues that his motion for a mistrial should have been granted by the trial court because the prosecution introduced inadmissible hearsay. Defendant objected at trial to the detective's testimony that defendant's probation officer said "she believed Silas Sherrod to be a compulsive thief and liar." This testimony was solicited by the prosecution on redirect examination to rebut a series of questions by defense counsel on cross-examination about why the detective did not accept defendant's first version of events. The prosecution was offering the statement to show the effect that the probation officer's words had on the detective and not the truth of the matter asserted. See, e.g., *People v Harris*, 201 Mich App 147, 151; 505 NW2d 889 (1993). Because the statement was not hearsay, the trial court did not abuse its discretion in admitting the testimony over defendant's hearsay objection. Although defendant now argues that the admission of the evidence was precluded by MRE 403 and 404, those grounds were not argued to the trial court at the time the challenged statement was admitted and are not preserved for appellate review. *People v Stimage*, 202 Mich App 28, 30; 507 NW2d 778 (1993). Considering those arguments that were suggested at the time defendant moved for a mistrial, we are nevertheless not persuaded that the court abused its discretion in denying defendant's motion for a mistrial. *People v Gonzales*, 193 Mich App 263, 265; 483 NW2d 458 (1992).

Defendant's third argument on appeal is that his confession should have been suppressed. We disagree with each of the grounds advanced by defendant in support of this argument.

Contrary to defendant's argument, *People v Nantelle*, 130 Mich App 51; 342 NW2d 627 (1983) does not indicate that *Miranda*[1] rights must be waived in writing. The police officers who interviewed defendant at separate times testified at the *Walker*[2] hearing that they read defendant his *Miranda* rights and that defendant stated he understood them. Defendant did not testify. The trial court's finding that defendant waived his rights was not clearly erroneous. *People v Cheatham*, 453 Mich 1, 30; 551 NW2d 355 (1996).

With respect to the second part of defendant's argument, we note that this Court has held that the police are not required to read *Miranda* rights every time a defendant is questioned. *People v Littlejohn*, 197 Mich App 220, 223; 495 NW2d 171 (1992), citing *People v Godboldo*, 158 Mich App 603, 605; 405 NW2d 114 (1986). Considering the short interval between the interviews, we are not persuaded that the trial court's finding that the defendant had waived his *Miranda* rights was clearly erroneous. *Cheatum, supra*.

Defendant's final argument is that the prosecution presented insufficient evidence of defendant's intent to defraud the owner of the financial transaction device. In determining whether sufficient evidence was presented to sustain a conviction, we review the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994). Because of the difficulty of proving an actor's state of mind, circumstantial evidence and the reasonable inferences which arise from the evidence can constitute satisfactory proof of intent. *People v Warren (After Remand)*, 200 Mich App 586, 588; 504 NW2d 907 (1993).

Here, the prosecution offered evidence showing that defendant still had the credit cards in his possession five days after they were stolen and that he made no known attempt to return the credit cards. Additionally, defendant did not mention the credit cards to either his parole agent or the corrections officer performing the search of defendant's person. Viewed in the light most favorable to the prosecution, the evidence was sufficient for a rational trier of fact to infer defendant's intent to defraud.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Maureen Pulte Reilly
/s/ Charles D. Corwin

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

[2] *People v Walker*, 374 Mich 331,338; 132 NW2d 87 (1965)