**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A12-0918**

State of Minnesota,
Respondent,

vs.

Joseph Robert Gustafson,
Appellant.

**Filed April 22, 2013**
**Affirmed**
**Cleary, Judge**

Hennepin County District Court
File No. 27-CR-11-18669

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Michael Richardson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Theodora Gaitas, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Presiding Judge; Cleary, Judge; and Huspeni, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. VI, § 10.

## U N P U B L I S H E D  O P I N I O N

**CLEARY**, Judge

Appellant challenges his convictions, arguing that there is insufficient evidence to prove beyond a reasonable doubt that he committed three predicate offenses and that the district court erred by admitting improper character evidence. In a pro se supplemental brief, appellant raises additional issues challenging his convictions, which we determine are without merit. We affirm.

## FACTS

In June 2011, appellant Joseph Robert Gustafson Sr. was charged with racketeering under Minn. Stat. § 609.903, subd. 1(1) (2010), aiding and abetting kidnapping under Minn. Stat. § 609.25, subd. 1(3) (2008), aiding and abetting terroristic threats under Minn. Stat. § 609.713, subd. 1 (2008), aiding and abetting aggravated first-degree robbery under Minn. Stat. § 609.245, subd. 1 (2008), conspiracy to commit first-degree murder under Minn. Stat. § 609.185(a)(1) (2008), aiding and abetting attempted first-degree murder under Minn. Stat. § 609.185(a)(1), and aiding and abetting first-degree arson under Minn. Stat. § 609.561, subd. 3(a) (2004).

Appellant was charged as a result of his activities with a group of associates known as the "Beat-Down Posse" (BDP). Appellant and his son were the leaders of the BDP, and appellant also owned and operated Gustafson's Bail Bonds, Inc., a bail bond company. An investigation into the BDP focused on robberies, assault, kidnappings, weapons trafficking, narcotics trafficking, arson, and other crimes allegedly committed by the members of the BDP under the leadership and direction of appellant.

A jury trial was held in January 2012 and many witnesses testified, including members of the BDP. Witnesses at trial detailed the workings of appellant's enterprise, including his use of Gustafson's Bail Bonds to facilitate the activities of the BDP. The testimony relevant to this appeal involves three specific incidents: the kidnapping and assault of J.K. in September 2008; the arson at a house on Girard Avenue North (Girard house) in April 2006; and the aggravated robbery of C.L. in April 2008.

Before the jury received the case, the complaint was amended to remove the charges of aiding and abetting terroristic threats and aiding and abetting aggravated robbery and include a charge of aiding and abetting second-degree assault under Minn. Stat. § 609.222, subd. 1 (2008). Regarding the racketeering charge, the jury was instructed that it must find that the state had proven beyond a reasonable doubt that appellant committed at least three predicate offenses. The jury was presented with seven possible predicate acts; some of the acts were charged as stand-alone offenses in separate counts and some were not. Of those seven predicate acts, the jury found that the state proved, beyond a reasonable doubt, that appellant committed kidnapping, second-degree assault, first-degree arson, and accessory after the fact to aggravated robbery. The jury found that the state did not prove that appellant committed conspiracy to commit first-degree murder, attempted first-degree murder, and first-degree burglary. The jury also found appellant guilty of racketeering, kidnapping, second-degree assault, and first-degree arson. This appeal follows.

## D E C I S I O N

### I.

Appellant argues that there is insufficient evidence to prove that he participated in a pattern of criminal activity. When considering a claim of insufficient evidence, this court's review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume that "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). This is especially true when resolution of the matter depends on conflicting testimony. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). The reviewing court will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476–77 (Minn. 2004).

Minn. Stat. § 609.903, subd. 1 (2010) states:

> A person is guilty of racketeering if the person:
>
> (1) is employed by or associated with an enterprise and intentionally conducts or participates in the affairs of the enterprise by participating in a pattern of criminal activity;
>
> (2) acquires or maintains an interest in or control of an enterprise, or an interest in real property, by participating in a pattern of criminal activity; or
>
> (3) participates in a pattern of criminal activity and knowingly invests any proceeds derived from that

> conduct, or any proceeds derived from the investment or use of those proceeds, in an enterprise or in real property.

A "pattern of criminal activity" means three or more criminal acts that:

> (1) were committed within ten years of the commencement of the criminal proceeding;
>
> (2) are neither isolated incidents, nor so closely related and connected in point of time or circumstance of commission as to constitute a single criminal offense; and
>
> (3) were either: (i) related to one another through a common scheme or plan or a shared criminal purpose or (ii) committed, solicited, requested, importuned, or intentionally aided by persons acting with the mental culpability required for the commission of the criminal acts and associated with or in an enterprise involved in those activities.

Minn. Stat. § 609.902, subd. 6 (2010). The criminal acts qualifying under this statute are defined in Minn. Stat. § 609.902, subd. 4 (2010).

A person is criminally liable for aiding and abetting a crime committed by another "if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime." Minn. Stat. § 609.05, subd. 1 (2010). A defendant's conviction "cannot be had upon the testimony of an accomplice, unless it is corroborated by such other evidence as tends to convict the defendant of the commission of the offense, and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof." Minn. Stat. § 634.04 (2010). "Corroborating evidence is sufficient if it 'restores confidence in the accomplice's testimony, confirming its truth and pointing to the defendant's guilt in some substantial degree.'" *State v. Ford*, 539 N.W.2d 214, 225 (Minn. 1995) (quoting *State v. Scruggs*, 421 N.W.2d 707, 713 (Minn. 1988)). The sufficiency of the circumstantial evidence

corroborating an accomplice's testimony that the defendant participated in the crime charged is reviewed in the light most favorable to the verdict. *State v. Bowles*, 530 N.W.2d 521, 532 (Minn. 1995).

*Aiding and Abetting Kidnapping/Aiding and Abetting Second-Degree Assault*

Appellant first argues that the state failed to prove that he played a knowing role in the kidnapping and assault of J.K. because the only evidence of his involvement was testimony from Bryan Tiedens, the man who kidnapped and assaulted J.K., and an accomplice's uncorroborated testimony is insufficient to support a conviction.

Tiedens testified that he received instructions from appellant about "taking care of" J.K. Tiedens said that he understood these instructions to mean that he should "[b]eat [J.K.] up, shut [J.K.] up," or "[i]ntimidate him, scare him so he shuts up and doesn't talk to the cops anymore." He also testified that, when he assaulted J.K. in September 2008, he was "trying to shut [J.K.] up." J.K. also testified at the trial. J.K. stated that, when Tiedens was assaulting him, Tiedens said, "this is from [appellant.]" J.K.'s testimony corroborates Tiedens's testimony and provides sufficient proof that appellant advised or procured Tiedens to assault J.K.

Tiedens also testified that he had heard from appellant's son that Lenny Guilmette was a snitch and was working with the police. Both Tiedens and J.K. testified that, when J.K. expressed a desire to do bail work and mentioned Guilmette's name, Tiedens ordered J.K. into a garage to search him for a wire. Tiedens explained that he believed that checking J.K. for a wire was "part of" the instructions from appellant because if J.K. "had a wire on, it's not good for anybody." J.K. testified that, after he mentioned Guilmette's

name, Tiedens "kind of freaked out, told me to get in the garage, stripped me naked, check me for a wire. After he was satisfied I didn't have a wire on me, pulled my clothes back on and then had me sit up in the chair." J.K. also testified that Tiedens ordered him into the garage, that he did not feel that he could leave without a struggle, and that Tiedens told him that he was looking for a wire. J.K.'s testimony corroborates Tiedens's testimony that Tiedens believed that part of the instructions from appellant included making sure that J.K. did not have a wire.

There was corroborating testimony that appellant ordered Tiedens to assault J.K. and to make sure J.K. was not wearing a wire, and the evidence is sufficient to support the jury's finding that the state proved beyond a reasonable doubt that appellant aided and abetted second-degree assault and kidnapping.

Appellant next argues that the kidnapping and assault were so closely related that they constituted one predicate criminal act, and therefore if the evidence is insufficient to prove one of the other remaining predicate acts, then the state did not prove at least three predicate acts as required for racketeering by Minn. Stat. § 609.903, subd. 1(1). The predicate acts required must not be "so closely related and connected in point of time or circumstance of commission as to constitute a single criminal offense." Minn. Stat. § 609.902, subd. 6(2).

Appellant claims that the assault and kidnapping involved a single criminal objective. The criminal objective of the kidnapping was to contain J.K. within the garage and make sure that he did not have a wire. After that was complete, J.K. was allowed to put his clothes back on and sit on a chair in the garage. Then the assault began and

Tiedens's objective was to beat up J.K. It is clear from the testimony that, although the offenses were admittedly close in time, they were separate offenses.

*Aiding and Abetting First-Degree Arson*

Appellant also argues that the state failed to prove that he played a role in the 2006 arson at the Girard house. Appellant argues that the only evidence of appellant's participation in the arson was testimony from Troy Neuberger, the individual who actually set the fire. Appellant contends that "[w]hile much of Neuberger's testimony regarding the circumstances of the fire may have been corroborated by independent evidence, one critical portion of his story was not—that [appellant] gave him an order to burn down the house."

Neuberger testified that appellant ordered him to burn down the Girard house with gas and oil and that he should burn it down when appellant went to Rochester and the owner of the house reported to jail. Neuberger testified that, a few days after he received these instructions, appellant called him and told him, "it's time." Neuberger interpreted this to mean that it was time to burn the house down.

An investigator with the Minnesota Department of Commerce testified that he investigated the circumstances surrounding the fire. He confirmed that appellant was admitted to the Mayo Clinic in Rochester around the same time that the fire took place. He also confirmed that the owner of the house was in jail at the time of the fire. Neuberger's testimony was corroborated by the evidence collected by the investigator.

Appellant argues that not every detail of Neuberger's story was corroborated, but Minn. Stat. § 634.04 does not require *every* detail to be corroborated. The investigator's

testimony shows more than the circumstances or commission of the offense, it confirms the plan leading up to the fire and points to the defendant's guilt.

When viewed in the light most favorable to the verdict, the corroborating testimony confirms Neuberger's story about the arson plan. The evidence points to appellant's guilt because many of the elements of the plan had occurred when Neuberger started the fire. The corroborating evidence restores confidence in Neuberger's testimony, confirms its truth, and points to appellant's guilt to a substantial degree. The evidence is sufficient to support the jury's finding that appellant aided and abetted first-degree arson.

*Accessory After the Fact to Aggravated Robbery*

Finally, appellant argues that the state failed to prove that appellant was an accessory after the fact to the 2008 aggravated robbery of C.L. because the only evidence regarding appellant's role in the robbery was uncorroborated accomplice testimony. The state argues that one of the individuals who testified that appellant was an accessory after the fact was involved in the robbery, but was not an accomplice to being an accessory after the fact because he did not conceal the evidence or "clean up" after the crime.

An individual is considered an accomplice after the fact if he intentionally aids another person who the individual "knows or has reason to know has committed a criminal act, by destroying or concealing evidence of that crime, providing false or misleading information about that crime, receiving the proceeds of that crime, or otherwise obstructing the investigation or prosecution of that crime." Minn. Stat. § 609.495, subd. 3 (2010). "An accessory after the fact is not an accomplice." *State v.*

*Swanson*, 707 N.W.2d 645, 652 (Minn. 2006). "[W]here the acts of several participants are declared by statute to constitute separate and distinct crimes, the participants guilty of one crime are not accomplices of those who are guilty of a separate and distinct crime." *State v. Swyningan*, 304 Minn. 552, 555, 229 N.W.2d 29, 32 (1975).

The testimony regarding the robbery of C.L. came from two witnesses, Brent Kehler and Amber Fritche. Both Kehler and Fritche took part in the robbery of C.L. Fritche testified that, after C.L. was robbed, there "was blood everywhere from him getting beat up." She stated that appellant arrived at the house where the robbery had occurred and "told us that we needed to get the sh-t cleaned up," and that she then went into the kitchen, got a bucket of bleach water, and set it down. Kehler testified that, when appellant arrived after the robbery, appellant said "You guys clean this f-cking mess up because I don't want no DNA in here." Kehler also testified that he did nothing to clean up the house. Kehler stated that Fritche and another woman filled a bucket with water and bleach and started cleaning up the blood.

By helping to clean up the blood with bleach water, Fritche participated as an accessory after the fact, so she was an accomplice of appellant. But her testimony is corroborated by Kehler's testimony, and Kehler was not appellant's accomplice. Kehler participated in the robbery of C.L., but did not clean the blood after the robbery. His testimony is not accomplice testimony. Because we assume that the jury believed the state's witnesses and disbelieved any evidence to the contrary, there is sufficient evidence to support appellant's conviction as an accessory after the fact to aggravated robbery.

## II.

Appellant argues that the district court erred by admitting improper character evidence. Appellant did not object to any of the challenged testimony at trial. When a defendant fails to object to the admission of evidence, our review is under the plain-error standard. *See* Minn. R. Crim. P. 31.02; *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). "[B]efore an appellate court reviews an unobjected-to error, there must be (1) error; (2) that is plain; and (3) the error must affect substantial rights." *Griller*, 583 N.W.2d at 740. An error is plain if it is clear or obvious; "[u]sually this is shown if the error contravenes case law, a rule, or a standard of conduct." *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). "The third prong, requiring that the error affect substantial rights, is satisfied if the error was prejudicial and affected the outcome of the case." *Griller*, 583 N.W.2d at 741. If all three prongs of the test are met, we then determine whether we "should address the error to ensure fairness and the integrity of the judicial proceedings." *Id.* at 740.

*Appellant Is Racist*

Appellant first argues that the district court erred when it allowed testimony by Tiedens that appellant called J.K. a n----r and when it allowed the state to reference that testimony during the prosecutor's closing argument. "Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion . . . ." Minn. R. Evid. 404(a). "Character evidence" is evidence "regarding someone's general personality traits or propensities." *Black's Law Dictionary* 636 (9th ed. 2009).

There is nothing in the record to indicate that the state elicited this testimony to demonstrate that appellant is racist and acted in conformity with that personality trait. Rather, the state attempted to demonstrate that appellant issued an order to beat J.K. up and that Tiedens knew that, when appellant stated, "get that n----r," he meant J.K. The testimony did not reference a general character or personality trait to demonstrate that appellant acted in conformity with that trait. Rather, the testimony confirmed that appellant acted, i.e., that he ordered Tiedens to assault J.K.

Appellant also argues that this evidence was admitted in violation of Minn. R. Evid. 403. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . . ." Minn. R. Evid. 403. "Unfair prejudice under rule 403 is not merely damaging evidence, even severely damaging evidence; rather, unfair prejudice is evidence that persuades by illegitimate means, giving one party an unfair advantage." *State v. Schultz*, 691 N.W.2d 474, 478 (Minn. 2005).

The evidence was properly admitted here. The state was introducing evidence related to the charge at issue, namely, whether appellant ordered Tiedens to assault J.K. Even though the evidence may have been damaging, it did not persuade the jury by illegitimate means.

*Cooperating Witness C.P. Entered the Witness-Protection Program*

Appellant next argues that the court improperly admitted evidence that a cooperating witness, C.P., entered the witness-protection program. Appellant claims that

the evidence created an inference that appellant "was of bad character, and had a propensity to harm."

In *State v. Harris*, the Minnesota Supreme Court addressed the admissibility of witness-protection evidence. 521 N.W.2d 348, 351–53 (Minn. 1994). In *Harris*, the defendant was charged with and convicted of first-degree murder. *Id.* at 349. Several of the witnesses against him were placed in a witness-protection program because they feared for their safety as a result of testifying. *Id.* at 350. In exchange for their testimony against the defendant, the witnesses received favorable treatment in criminal cases pending against them. *Id.* At trial, the prosecutor highlighted the fact that the witnesses were in a protection program and that they were afraid to testify. *Id.* at 351. She asked three of the witnesses about their safety concerns during direct examination and asked them to explain the threats that they had received. *Id.* The prosecutor did not present any evidence connecting the defendant to any of the threats. *Id.* On appeal, the defendant argued that the prosecutor "elicited and improperly exploited" the witness-protection evidence. *Id.*

The supreme court held that witness-protection evidence is "generally relevant because the defendant is entitled to impeach the witness' credibility by establishing the witness benefitted from the program." *Id.* at 352. Noting that the state might choose to bring out evidence of the witness's participation in a protection program in anticipation of a challenge to the witness's credibility or to bolster the witness' credibility by demonstrating that the witness has suffered negative consequences as a result of the decision to testify, the supreme court also determined that, if witness-protection evidence

is admitted, the district court must give explicit instructions to the jury regarding the use of the evidence and "must also strictly control the use of the evidence by the prosecution to prevent its exploitation." *Id.* The supreme court acknowledged that each case is different and that "[w]itness protection evidence is admitted to promote or to rebut an inference about the credibility of the testifying witness, and has no relationship to the defendant. The prosecutor may neither encourage nor exploit the inference that fear of a particular defendant caused the witness to seek the state's protection." *Id.*

Finally, the supreme court observed that the prosecutor's questioning about the witness-protection evidence did not only occur once or with one witness, but was repeated and an important focus of her questioning. *Id.* The court determined that the cumulative effect of the continuous references to the witnesses' fear created the inference that the defendant "was of bad character and had a propensity to commit crimes of violence," and that the references likely had a substantial impact on the jury. *Id.* The supreme court held that the district court erred "by allowing the inference, where there was no evidence, that [the defendant] was the source of the danger or perceived danger which caused the witnesses to seek the state's protection and by allowing the prosecutor to exploit this inference." *Id.* at 353. Based in part on this error, the supreme court vacated the defendant's conviction and remanded the case to the district court for a new trial. *Id.* at 355.

Contrary to appellant's arguments, *Harris* is distinguishable from the facts here. When C.P. testified about the witness-protection program, he was demonstrating that he had suffered financially as a result of his participation in the program. He explained that,

even though he received money for moving costs, mortgage payments, and other expenses, he ultimately lost his house to foreclosure and "lost out financially." C.P.'s testimony was the proper form of bolstering testimony anticipated in *Harris*, and it was not error to admit it.

Appellant also argues that the testimony by the lead investigator in the case, Sergeant Kelly O'Rourke, explaining that "the defendant would have known exactly where the information came from," and therefore C.P. was placed in a protection program for his own safety, was improperly admitted. *Harris* indicates that a district court should not allow the inference, *without evidence*, that the defendant is the source of the danger or perceived danger that causes the witness to seek the state's protection. *Id.* at 353. Because there was evidence here to support the inference that appellant was the source of perceived danger as a result of the information provided by C.P. in the affidavits for search warrants, no error occurred.

Finally, appellant argues that the district court's failure to give a cautionary instruction to the jury was plain error. Because *Harris* explicitly states that, if witness-protection evidence is admitted, "the [district] court must give the jury explicit instructions as to the use of the evidence," the failure to give an instruction was error. *Id.* at 352. But to satisfy plain-error analysis, appellant must meet the third prong of the plain-error test, "requiring that the error affect substantial rights." *Griller*, 583 N.W.2d at 741. This prong "is satisfied if the error was prejudicial and affected the outcome of the case." *Id.* Unlike the circumstances in *Harris*, there was only one witness involved in a witness-protection program here. The prosecution did not unduly emphasize the fact that

C.P. was in the program and elicited the testimony from C.P. to bolster his credibility. Sergeant O'Rourke testified that C.P. was placed in witness protection for his own safety because the affidavits for search warrants included such highly detailed information that the defendant would know exactly who had provided the information. The failure to instruct the jury regarding the proper use of the witness-protection evidence was not prejudicial, nor did it affect the outcome of the case.

*Appellant was Associated with Hell's Angels*

Appellant next argues that the court improperly admitted evidence that appellant was associated with the Hell's Angels motorcycle gang. He claims that "[t]wo of the state's witnesses intimated that [appellant] was affiliated with the Hell's Angels motorcycle gang," and that this evidence was highly inflammatory.

The argument that this evidence was highly inflammatory is unpersuasive, as appellant's counsel actually referenced appellant's membership in Hell's Angels first, in his opening argument. Appellant's counsel stated, "One thing you're going to find out is that [appellant] was a mean, angry, violent man in the 80s and the early 90s. He was a member of Hell's Angels motorcycle club."

*Other Inflammatory Evidence Reflecting Poorly on Appellant's Character*

Appellant also argues that the district court erred when it admitted improper evidence that appellant was involved in other crimes, including operating prostitutes out of one house and using another house as a marijuana "grow house," and that appellant was a "very dangerous man." Appellant argues that the testimony about illegal activities

at the two houses is *Spreigl* evidence and that the "dangerous man" testimony is character evidence.

Appellant first argues that the testimony about prostitution and drugs at the two houses was *Spreigl* evidence. Minn. R. Evid. 404(b) governs the admission of *Spreigl* evidence and states that "[e]vidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith," but it may "be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."

Appellant does not indicate how the brief references to prostitutes at the Logan Avenue address (where C.L. was robbed) and a failed "grow" operation (at the house later burned down) were admitted to prove his character in order to show that he acted in conformity therewith. There was no indication that the witnesses were implicating appellant in drug or prostitution offenses, and the references were brief and not offered to show the bad character of appellant. Under such circumstances, notice of intent to admit the evidence was not required from the prosecutor.

Appellant next argues that Sergeant O'Rourke's comment that appellant was a "very dangerous man" was improperly admitted character evidence. "Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion. . . ." Minn. R. Evid. 404(a). "Character evidence" is evidence "regarding someone's general personality traits or propensities." *Black's Law Dictionary* 636 (9th ed. 2009).

Sergeant O'Rourke's statement was improper character evidence, and the district court erred by admitting it. But to satisfy plain-error analysis, appellant must also show that the "error was prejudicial and affected the outcome of the case." *Griller*, 583 N.W.2d at 741. Given the extensive testimony received in this case, this one brief statement in a multi-day trial was not prejudicial, nor did it affect the outcome of the case.

*Cumulative Error*

Finally, appellant claims that the cumulative effect of these errors deprived him of a fair trial. "Even though errors individually may not warrant a new trial, in certain cases the cumulative effect of the errors may warrant reversal." *State v. Valentine*, 787 N.W.2d 630, 642 (Minn. App. 2010), *review denied* (Minn. Nov. 16, 2010). A reviewing court must determine whether the cumulative effect of the errors "may have deprived appellant of a fair trial." *State v. Erickson*, 610 N.W.2d 335, 340 (Minn. 2000) (quotation omitted).

As discussed above, the testimony indicating that appellant was a racist and a member of Hell's Angels and the comments about drugs and prostitution at the two houses were not admitted in error. The district court's failure to instruct the jury about the proper use of the witness-protection evidence and the admission of Sergeant O'Rourke's comment that appellant was a "very dangerous man" were errors, but appellant has not demonstrated how these errors were prejudicial and affected the outcome of the case. There was extensive testimony, given by numerous witnesses, about appellant's illegal activities. Because appellant has not demonstrated that the isolated errors affected the outcome of the case, he was not deprived of a fair trial.

**Affirmed.**