

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEANGELO C. DAVIS,

Defendant-Appellant.

UNPUBLISHED

January 7, 1997

No. 183141

Washtenaw Circuit Court

LC No. 94-2696-FC

Before: McDonald, P.J., and Murphy and J. D. Payant*, JJ.

PER CURIAM.

Following a jury trial defendant was convicted of armed robbery, MCL 750.529; MSA 28.797, and sentenced to seven to twenty-five year's imprisonment. Defendant appeals as of right alleging his conviction should be reversed because insufficient evidence was submitted in support of it, certain evidence was improperly admitted, he was denied a fair trial as a result of prosecutorial misconduct and that the jury was improperly instructed. We affirm.

Sufficient evidence was presented to support defendant's conviction. Force used to effectuate an escape is sufficient to supply the element of force or coercion essential to the offense of robbery. *People v Velasquez*, 189 Mich App 14; 472 NW2d 289 (1991). The remedy for noncompliance with a discovery order or agreement is discretionary with the court. *People v Loy-Rafuls*, 198 Mich App 594; 500 NW2d 480 (1993) rev'd on other grounds 442 Mich 915; 503 NW2d 453 (1993). The instant trial court did not abuse its discretion in permitting the introduction of the undisclosed evidence. The nondisclosure was not willful, defendant was afforded the opportunity to investigate the matter, and the delay in disclosure did not render the evidence any more prejudicial to defendant.

Although during the prosecutor's closing statement the prosecutor improperly commented on facts not in evidence, the comment did not deprive defendant of a fair trial. *People v LeGrone*, 205

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

Mich App 77; 517 NW2d 270 (1994). Any prejudice could have been cured by a timely objection and request for a curative instruction. *People v Stanaway*, 446 Mich 643; 521 NW2d 557 (1994).

Next, a review of the record reveals the jury instructions presented the issues to be tried and sufficiently protected defendant's rights. *People v Davis*, 216 Mich App 47; 549 NW2d 1 (1996). The requested instructions were either unsupported by law or by the record. Moreover, even had error occurred, we would find it harmless given the jury's rejection of the lesser instructed charges and conviction of defendant on the original charge. *People v Ross*, 73 Mich App 588 (1977).

Finally we find no merit to defendant's claim he was denied the effective assistance of counsel. Defendant has failed to overcome the strong presumption that his counsel was effective. *People v Eloby, (After Remand)* 215 Mich App 472; 547 NW2d 48 (1996). Counsel is not ineffective for failing to make a futile request. *People v Rodriguez*; 212 Mich App 351; 538 NW2d 42 (1995).

Affirmed.

/s/ Gary R. McDonald

/s/ William B. Murphy

/s/ John D. Payant