

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM ALBERT WOODWARD, JR.,

Defendant-Appellant.

UNPUBLISHED

August 19, 1997

No. 188421

Genesee Circuit Court

LC No. 95-052121-FC

Before: Sawyer, P.J., and Bandstra and E. A. Quinnell*, JJ.

MEMORANDUM.

Defendant appeals by right his jury conviction of armed robbery and first-degree home invasion, resulting in an enhanced sentence following defendant's adjudication of being a fourth offender. We affirm.

Defendant raises a single issue on appeal, a contention that he was deprived of a fair trial when the prosecutor, in opening statement, indicated that a witness would be produced who would testify that a codefendant, Marcus Moore, had confessed the entire scheme to him while the two were housed in the county jail, implicating defendant and the third defendant, Henry Scales, as accomplices. Subsequently, the prosecution rested without calling this witness, Bowan, to testify. Motions for mistrial on behalf of defendant and Moore were made and overruled, but during closing argument the attorneys for each of the three defendants called the jury's attention to the prosecution's failure to produce evidence it had promised, namely, Bowan's testimony.

Bowan was not called because the prosecution refused to accede to his demand that, in exchange for his testimony, he be released from the county jail, where he was serving his own sentence, and placed on a tether program. The fact that Bowan was prepared to testify in the manner described by the prosecution in opening statement was established at a testimonial hearing that immediately preceded the commencement of trial. The prosecution's decision not to force Bowan to testify, having decided not to seek a change in his sentence from the trial judge who presided over Bowan's case, was

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

apparently based on Bowan's report that, while held in the court's holding cell that very day, he had been threatened by defendant Woodward.

The fact that Moore himself was acquitted of all charges, despite being viewed by the prosecution as the prime mover in the criminal episode, and being the prime focus of Bowan's proposed testimony as described in opening statement, establishes conclusively that the jury was not swayed to the prejudice of any of the defendants by the prosecutor's opening statement, which included only tangential references in that regard to Woodward and Scales. It is therefore appropriate in this case to apply the rule that when a prosecutor states that evidence will be submitted to the jury, which is subsequently not presented, reversal is unwarranted if the prosecutor acted in good faith. *People v Johnson*, 187 Mich App 621; 468 NW2d 307 (1991).

Affirmed.

/s/ David H. Sawyer

/s/ Richard A. Bandstra

/s/ Edward A. Quinnell