

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ARMANDO JOHNSON SACHEL,

Defendant-Appellant.

UNPUBLISHED

February 6, 1998

No. 191464

Mecosta Circuit Court

LC No. 95-003644-FC

Before: Hood, P.J., and McDonald and White, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of armed robbery, MCL 750.529; MSA 28.797, and one count of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The trial court sentenced defendant to fifteen to thirty years' imprisonment for each of the armed robbery convictions and two years' imprisonment for the felony-firearm conviction.¹ Defendant now appeals as of right. We affirm.

The charges in this case were filed in connection with the third of five armed robberies that were allegedly committed by defendant within a fifty-minute time period on April 8, 1995. Defendant was charged with taking money at gunpoint from two men as they were leaving work shortly after midnight.

Defendant first claims the trial court abused its discretion when it allowed some of the victims of the other robberies to testify in the instant case. We find that even if the trial court abused its discretion in admitting this testimony, any error was harmless in light of the overwhelming evidence of defendant's guilt. MCL 769.26; MSA 28.1096; *People v Figgures*, 451 Mich 390, 406; 547 NW2d 673 (1996). Two occupants of the car in which defendant was riding testified that they saw defendant at the victim's car and the victim's hands in the air. Defendant's fingerprints were found on the gun, and his footwear impressions were substantially similar to the footprints of the perpetrator. One of the victims in this case identified the sweatshirt defendant admitted he was wearing the night of the crime as the sweatshirt worn by the gunman. Accordingly, the challenged testimony was not decisive to the outcome of the case.

Defendant next argues that the cumulative effect of various errors deprived him of his right to a fair trial. We disagree. The test to determine whether the cumulative effect of a number of minor errors requires reversal is not whether defendant received a perfect trial, but whether he received a fair trial. *People v Bahoda*, 448 Mich 261, 292-293, n 64; 531 NW2d 659 (1995). Upon review of the record, we conclude that, although error may have occurred, it did not deprive defendant of a fair trial.

Defendant cites three errors, claiming the cumulative effect of these errors denied him a fair trial. First, defendant cites an instance where a victim of another of the April 8 robberies testified that he was struck during the assault. This testimony violated the trial court's ruling that evidence of physical violence during the other April 8 robberies was to be excluded. We find that any prejudice from this passing reference to physical violence was cured when the trial court instructed the jury that it must not consider the other victims' testimony except for the purpose of establishing defendant's identity and intent.

Next, defendant cites to an instance where a police officer testified that only defendant's fingerprints were submitted for processing because the "victims at all the locations where these armed robberies occurred . . . identified [defendant] . . . as the person with the handgun." This testimony violated the trial court's ruling that evidence that any victim had identified defendant would be excluded. However, any prejudice from this testimony was cured when the police officer clarified his testimony by explaining that he meant defendant matched the victims' descriptions, not that the victims had actually identified him.

The final error defendant urges this Court to consider in determining whether the cumulative effect of the errors at his trial deprived him of a fair trial is that the prosecutor failed to disclose a one-year sentence cap contained within the plea agreement with witness Worth. Under MCR 6.201(B)(5), the prosecutor must, upon request, supply a defendant with copies of any plea agreement, grant of immunity or other agreement regarding testimony. If the prosecutor fails to disclose this information upon request, the trial court has discretion to exclude the testimony or evidence or to impose another remedy it deems appropriate. MCR 6.201(I). When defendant raised this issue at a post-trial motion for a directed verdict or new trial, the trial court declined to impose a remedy, finding that even if Worth's testimony had been stricken, there was sufficient evidence to support the verdict. The trial court concluded that Worth's testimony was cumulative; i.e. the other two occupants of the car testified to the same series of events, and their version of the incident was consistent with that of the victims. We agree with the trial court's conclusion. Accordingly, we find that defendant was not denied a fair trial.

Finally, defendant challenges his sentence. Defendant claims his sentence was disproportionate given his lack of a criminal record. Defendant also argues the trial court improperly took the other pending robbery charges into account when imposing a sentence that exceeded the guidelines recommended range. It was proper for the trial court to consider defendant's other pending charges when imposing sentence. *People v Ewing (After Remand)*, 435 Mich 443, 446 (Brickley, J.), 473 (Boyle, J.); 458 NW2d 880 (1990); *People v Coulter (After Remand)*, 205 Mich App 453, 456; 517 NW2d 827 (1994). Furthermore, defendant's sentence is substantially less than the life maximum provided in the statute. MCL 750.529; MSA 28.797. Finally, although defendant has no prior record of assaultive behavior, his one-man crime wave on April 8, 1995 resulted in five separate prosecutions

for armed robbery affecting seven victims. Accordingly, we find that defendant's sentence is proportionate, and the trial court did not abuse its discretion when imposing sentence. *People v Parrish*, 216 Mich App 178, 184-185; 549 NW2d 32 (1996).

Affirmed.

/s/ Harold Hood

/s/ Gary R. McDonald

/s/ Helene N. White

¹ Defendant's sentence for the felony-firearm conviction is to be served consecutive to the sentences for the armed robbery convictions, which run concurrently.