

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD WALLACE, JR.,

Defendant-Appellant.

UNPUBLISHED

December 29, 1998

No. 204920

Recorder's Court

LC No. 96-006816

Before: Holbrook, Jr., P.J., and O'Connell and Whitbeck, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529; MSA 28.797, and assault with intent to do great bodily harm, MCL 750.84; MSA 28.279. Defendant was given an enhanced sentence as an habitual offender, second offense, MCL 769.10; MSA 28.1082, of fifteen to thirty years' imprisonment. Defendant appeals as of right. We affirm.

This case stems from the July 10, 1996, armed robbery of Jolanta Matuszczyk. At the time of the assault, Matuszczyk was an employee of the Saxony Motel. Just before noon on July 10, 1996, Matuszczyk entered room number 20 in order to clean it. She was then attacked by a man who was hiding behind the door inside the room. The man struck Matuszczyk numerous times with a piece of asphalt. Matuszczyk identified defendant as her attacker approximately one month after the assault during a police line up, and then again at the preliminary examination. However at trial, Matuszczyk was unable to positively identify defendant.

Defendant argues that reversal of his convictions is warranted because two instances of prosecutorial misconduct had the effect of denying him a fair trial.

The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. Questions involving prosecutorial misconduct are decided case by case, and this Court must evaluate each question within the context of the particular facts of the case. Appellate review of allegedly improper remarks is precluded absent an objection unless a curative instruction could not have eliminated the prejudicial effect or

where failure to consider the issue would result in a miscarriage of justice. [*People v Howard*, 226 Mich App 528, 544; 575 NW2d 16 (1997) (citations omitted).]

I

First, defendant argues that questions posed by the prosecutor to Sergeant Bandy of the Detroit Police Department regarding defendant's use of an alias were improper because the alias evidence was irrelevant. Alternatively, defendant argues that even if the evidence was relevant, it should not have been admitted because what little relevancy it might have was substantially outweighed by the unfair prejudicial effect it had on the minds of the jurors. We reject each of these claims.

Preliminarily, we note that during the course of the testimony now cited as improper, defendant only raised a single objection. After the witness was asked whether the giving of a false name and birth date might adversely affect the ability of the police to discover the existence of any outstanding warrants "and things of that" sort, defendant objected on the ground of relevancy. The trial court sustained the objection and instructed the jury to "disregard the last comment." Previous questioning on defendant's use of an alias was never objected to by defendant.

Defendant does not argue, however, that he was prejudiced by this singular question. Rather, he asserts that the entire issue of an alias was improperly interjected into the trial. Given the scope of defendant's argument on appeal, we conclude that this issue was not properly preserved by the singular objection raised. While the objection was based on relevancy, the challenge was specifically focused on the relevancy of evidence addressing the affect an alias has on uncovering information about defendant's criminal history. MRE 103(a)(1). Defendant's failure to raise a specific and timely objection means that that appellate review is precluded absent manifest injustice. *People v Asevedo*, 217 Mich App 393, 398; 551 NW2d 478 (1996).

Sergeant Bandy testified that according to a police report prepared by another officer, defendant first identified himself to the police as Bruce Dewayne Wallace. Defendant also gave the police an erroneous birth date and indicated that he had not been registered at the Saxony Motel. While Sergeant Bandy's testimony regarding the contents of the police report may have constituted inadmissible hearsay, we perceive no manifest injustice as the appropriate police officers could presumably have been called to testify to the pertinent information.

Further, we believe that defendant's futile attempt to conceal his identity from the police is probative of defendant's consciousness of guilt, and therefore relevant. *People v Cutchall*, 200 Mich App 396, 400-401; 504 NW2d 666 (1993). Further, we also conclude that the probative value of this evidence was not substantially outweighed by the danger of unfair prejudice. MRE 403. Therefore, the admission of this evidence did not result in manifest injustice.¹

II

Second, defendant contends that the prosecutor improperly questioned the victim regarding her fears about testifying. Again, we disagree. It would have been improper for the prosecutor to question

the witness about her fear of the defendant without a proper foundation. *People v Walker*, 150 Mich App 597, 603; 389 NW2d 704 (1985). However, after reviewing the record, we believe that a foundation was laid for the questioning. The victim was unable to identify defendant at trial, despite having identified him at a lineup and at the preliminary examination. Further, during questioning by the court out of the presence of the jury, the witness indicated that even though she had not been specifically threatened, she did fear reprisal by defendant. Accordingly, the prosecution's general questions about the witness' state of mind when testifying were not improper. See *People v Jones*, 115 Mich App 543, 549; 321 NW2d 723 (1982). While arguably the prosecution should not have asked the witness why she was afraid, given that she previously indicated to the trial court that she had not specifically been threatened by defendant, we note that defendant's objection to the question was sustained by the trial court. Under these circumstances, we see no prejudice warranting a reversal of defendant's conviction.²

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Peter D. O'Connell

/s/ William C. Whitbeck

¹ As for the specific question objected to by defendant, we believe the trial court's handling of the matter sufficiently safeguarded defendant's right to a fair trial.

² Defendant's question presented contains a cryptic reference to evidence about defendant having lied to police. If defendant was referring to the testimony concerning his alias, this matter has already been dealt with. See discussion *supra* at part I. If, however, defendant was referring to the prosecution's reference during closing argument to defendant's lying about his identity, then the matter is not properly before us. Not only did defendant fail to object to the comment when it was made, he also failed to argue the merits of any such claim in his brief on appeal. The matter is therefore both unpreserved, *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994), and abandoned, *People v Anderson*, 209 Mich App 527, 538; 531 NW2d 780 .