

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRENCE D. MOORE,

Defendant-Appellant.

UNPUBLISHED

February 23, 1999

No. 205251

Oakland Circuit Court

LC No. 97-150585 FH

Before: Whitbeck, P.J., and Cavanagh and Griffin, JJ.

PER CURIAM.

A jury convicted defendant of first-degree home invasion, MCL 750.110a(2); MSA 28.305a(2). The trial court sentenced defendant to ten to forty years as a third-time habitual offender, MCL 769.13; MSA 28.1085. Defendant now appeals as of right. We affirm.

I. Basic Facts And Procedural History

On October 6, 1996, Robert Cade, an eighty-year-old man, was alone in his living room watching television. Cade's one-story house had two bedrooms, a bathroom, a kitchen, and a basement. At approximately 10:45 p.m., Cade heard a noise and went through the kitchen and down two stairs to the landing leading to the back door and to the basement. As Cade switched on his outside lights and raised the curtain, he was suddenly struck by an object and knocked backwards down the seven basement stairs. Cade lost consciousness and woke up in a pool of blood. Cade discovered that his feet were tied but his hands were not. Cade untied himself, climbed up the stairs and went out the back door and then to a neighbor's house. The neighbor called the Ferndale police. Three scout cars responded at around 11:15 p.m., and Officer Brian Kirk found Cade incoherent, unable to move, and with his face covered with blood. Officer Kirk called for an ambulance, which transported Cade to William Beaumont Hospital, where he received treatment and was released the following day.

The police investigated Cade's house and called in evidence technicians. The police returned to the house the next day to conduct a second, more thorough search during daylight hours and continued to investigate the crime over the next several weeks. When Cade returned home, he discovered that his telephone wire had been cut, his house had been ransacked, drawers and belongings had been dumped

on the floor and his VCR and wallet were missing. In Cade's wallet had been credit cards, identification, pictures, a UAW card, Social Security cards and Blue Cross cards. Cade also had \$176 in cash in his wallet, which was never recovered.

On the night of the robbery, defendant¹ came to the house where Colleen Reeves lived, with one Louis Rangel, sometime between 2:00 a.m. and 6:00 a.m. Defendant told Reeves and Rangel that he had "hit a lick," which Reeves understood to mean that he "made a score, got some money or made a robbery". Defendant pulled out what Reeves identified in court as Cade's wallet. In the wallet, both Reeves and Rangel saw credit cards, a UAW card, and other "senior citizen" things. Defendant told Reeves and Rangel that he had gone into an older man's house, hit him in the head and that the man had gone down the basement steps. Defendant paged several people in an attempt to get a ride back to Cade's house to pick up the television and VCR, but did not get a response. Defendant then left on foot. Several months later, Reeves found a pharmacy card and a senior citizen card that belonged to Cade on a shelf in her living area. Reeves turned the cards over to the Ferndale police.

Sometime after October 6, 1996, defendant went to Sandra Carter's house and asked her to keep the contents of a wallet for him. Defendant put the papers and cards into a small, brown paper bag that Carter gave him and left it with her, keeping the wallet. About three weeks later, Carter looked at the contents of the bag and saw, among other things, pictures and an American Association of Retired Persons card. Carter called information to obtain the telephone number of the person listed on the documents and then called Cade. Because she did not want to be associated with the crime, Carter told Cade that she had found the items at the end of her driveway and offered to return his belongings. Cade gave her his address and directions to his house. However, after hanging up, Cade then called the police. When Carter came to Cade's front door that day, the police intercepted her and took her to a police station. Although Carter initially made a written statement to the police that she found the items at the end of her driveway, she subsequently gave a written statement that defendant had brought the items to her home.

Detective George Hartley conducted a photo lineup with Carter at which she identified defendant. The police then arrested defendant; at the time of his arrest, defendant was in possession of Cade's missing wallet.

Cornel Robinson shared an Oakland County jail cell with defendant² after defendant's arrest. According to Robinson, defendant told him many details of the crime over a period of six or seven days. Subsequently, Robinson wrote a letter to the prosecutor's office indicating that he had information about the home invasion. Detective Hartley interviewed Robinson and indicated that, although he could not guarantee any results, he would write a letter to the parole board for Robinson if he testified in defendant's trial. According to Robinson, this was the only promise anyone made to him concerning his cooperation. Detective Hartley testified that Robinson's story was consistent with information the police already had regarding this crime and that Robinson provided further information in a detailed, written report. Shortly after this testimony, the prosecutor asked Detective Hartley, "How did you describe the information you received from Mr. Robinson?" Detective Hartley replied, "Extremely reliable and it paralleled to what I was told." Defense counsel objected, stating that the witness was trying to bolster the testimony of a previous witness, but the trial court overruled his objection.

At the close of the prosecution's case, defense counsel requested a directed verdict that the trial court denied. The defense rested without presenting any witnesses.

II. Standard Of Review

A. Jury Instructions

This Court reviews jury instructions in their entirety to determine if there was error that requires reversal. *People v Whitney*, 228 Mich App 230, 252; 578 NW2d 329 (1998). Because harmless error analysis applies, a new trial will not be granted based on error in jury instructions unless an examination of the entire record indicates that the error caused a miscarriage of justice. *People v Graves*, 458 Mich 476, 484; 581 NW2d 229 (1998). There is no error as long as the jury instructions "fairly presented the issues to be tried and sufficiently protected a defendant's rights." *Whitney, supra* at 252-253. Defendant preserved this issue by arguing against the inclusion of the instruction at issue during the trial.

B. Prosecutorial Misconduct

This court tests alleged prosecutorial misconduct by examining each case in context and deciding whether the defendant received a fair and impartial trial. *People v Howard*, 226 Mich App 528, 544; 575 NW2d 16 (1997). This issue is preserved for review because defendant promptly objected to the testimony at issue.

C. Cumulative Error

The cumulative effect of minor errors may require reversal of a conviction if a defendant is denied a fair trial. *People v Daoust*, 228 Mich App 1, 16; 577 NW2d 179 (1998).

III. Jury Instructions

Defendant argues that the trial court erred in instructing the jury that it could infer larceny from defendant's possession of recently stolen property. We disagree.

The trial court instructed the jury that, to prove the charge of first-degree home invasion, the prosecutor had to prove beyond a reasonable doubt that defendant broke and entered the dwelling with intent to commit larceny when another person was lawfully present. The trial court further instructed the jury that if it determined that defendant had possession of the property that had recently been stolen from that dwelling, it might, but did not have to, infer that defendant committed larceny. Defendant admits that these instructions properly stated the applicable law, but argues that the jury would have believed that it need only find a theft in order to convict defendant of home invasion. We again disagree.

Nowhere did the trial court's jury instructions suggest to the jury that it could convict defendant of home invasion if it found him guilty of larceny. The jury instructions clearly stated that the jury could not convict defendant unless the prosecution proved the four elements of home invasion that the trial

court described in detail. Michigan law presumes that jurors follow instructions. *Graves, supra* at 486. Although the instructions would have been clearer if the trial court had specifically explained to the jury that it gave the larceny instruction only to assist the jury in determining the intent element, jury instructions need not be perfect. *Whitney, supra* at 252-253. By fully explaining the elements of home invasion as well as how intent could be determined, the trial court's jury instructions fairly presented the issue that the jury was called upon to decide and sufficiently protected defendant's rights. Therefore, we find that the trial court did not err in its instructions to the jury.

IV. Prosecutorial Misconduct

Defendant argues that the prosecutor committed misconduct in eliciting testimony from Detective Hartley that, in Hartley's opinion, witness Robinson was extremely reliable. Defendant contends that it was error for the trial court to allow this testimony. We disagree.

It is generally improper for a prosecution witness to testify as to the credibility of another prosecution witness, because it is for the jury to determine credibility. *People v Smith*, 158 Mich App 220, 230; 405 NW2d 156 (1987). However, the prosecutor in this case did not elicit opinion testimony. The prosecutor merely asked, first, whether the information Robinson gave Detective Hartley was consistent with other information the police had about the crime and, second, how the detective described that information. In response, Detective Hartley testified that the information was consistent and therefore he found the information to be highly reliable. Detective Hartley was testifying regarding his investigation of this crime and his opinion as to the information Robinson gave him at the time. He did not refer in any way to Robinson's testimony at trial, nor did he ever say that he thought Robinson himself was a credible witness. Because improper opinion testimony as to the reliability of a witness' testimony was neither elicited nor given, defendant was not denied a fair trial.

V. Cumulative Error

Defendant argues that he was denied his right to a fair trial by the cumulative effect of errors in the trial court. While one error in a case may not necessitate reversal, the cumulative effect of a number of minor errors may require reversal. *Daoust, supra*. We hold that defendant has established no errors in this trial and, therefore, that the argument that the cumulative effect of such errors denied defendant a fair trial is without merit.

Affirmed.

/s/ William C. Whitbeck

/s/ Mark J. Cavanagh

/s/ Richard Allen Griffin

¹ Colleen Reeves knew defendant only as "D" but identified him in court.

² Defendant was in prison under the name Roy Lee Smith. Robinson identified defendant in court as the person he knew by that name.