

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES WESLEY SAMUELS,

Defendant-Appellant.

UNPUBLISHED

March 16, 1999

No. 203246

Muskegon Circuit Court

LC No. 96-139986 FH

Before: Kelly, P.J., and Gribbs and Fitzgerald, JJ.

PER CURIAM.

Following a jury trial, defendant, an inmate at Muskegon Correctional Facility, was convicted of assaulting a prison employee, MCL 750.197c; MSA 28.394(3), and was sentenced as an habitual offender to a prison term of four to six years, to be served consecutive to the forty-to eighty year sentence defendant was serving for a second-degree murder conviction. Defendant appeals as of right. We affirm.

The prosecutor's theory at trial was that defendant led a group of his fellow inmates out of the television room, walked up to Corrections Officer Frank Buzas, and "sucker-punched" him in the side of the face¹ as a signal to other inmates to start rioting. Defendant's theory was that he knew of "certain little groups in [prison]; in fact even semi or religious organizations that have great beefs with the system," and that these groups must be feared. Thus, when he walked out of the television room to return to his cell and heard a riot break out, he feared for his safety when he felt someone shove him from behind and, consequently, lashed out in self-defense.

FACTS

Corrections Officer Robert Slagle testified that he was working as a guard at the facility when he spotted defendant in the day room playing cards with some inmates. At approximately 10:15 p.m., defendant attempted to call Officer Slagle into the day room. When defendant persisted, Officer Slagle informed defendant that he would have to walk out to the desk if he wanted to speak with him. Defendant testified that he wanted to speak with Officer Slagle about a recently instituted dress code

that prohibited inmates from wearing their own shoes during visiting hours. Apparently, a number of inmates were upset by the recent change in policy.

Officer Slagle further testified that, at approximately 11:15 p.m., he noticed a disproportionate number of black inmates congregating in the television room dressed in their state-issued “blues,” instead of in their own clothes. According to Officer Slagle, prison inmates tend to form various groups organized along religious and ethnic lines. Officer Slagle also indicated that it is unusual to see large groups of prisoners dressed in blues, except during visiting hours and religious services. Consequently, Officer Slagle contacted the prison’s control center and notified them that he suspected a potential problem.

Officer Buzas testified that he also noticed a large number of inmates gathering in the television room wearing their blues. He indicated that the prisoners in the television room were unusually boisterous and the inmates in the rest of the unit were unusually quiet. The inmates refused to comply with Buzas’ directive to quiet down, so Buzas contacted the control center and asked for immediate assistance.

According to Officers Slagle and Buzas, approximately fifteen minutes later defendant left the television room followed by a large group of inmates all dressed in their blues. Officer Buzas testified that defendant walked up next to him and punched him in the side of the face. Officer Slagle testified that he pulled a chair in front of himself, turned toward Officer Buzas, and saw defendant punch Officer Buzas in the face. Corrections Officer Troy Baker testified that he was sitting at his desk outside the television room when Officer Buzas fell across his lap. He immediately looked up and saw defendant standing next to the desk. When he attempted to approach defendant, another inmate struck him in the back of the head. All three officers testified that the inmate closest to defendant was at least five to seven feet behind defendant.

Corrections Officer James Garvey testified that he was in the kitchenette searching for hidden weapons when he heard some commotion outside the door. He looked out into the hallway, spotted the rioting inmates, noticed Officers Buzas and Slagle lock themselves in the officers’ bathroom, and witnessed defendant screaming profanity toward the bathroom. When Officer Garvey tried to calm defendant, another inmate struck him in the head, temporarily blinding him. Officer Garvey estimated that the inmates kicked and punched him approximately twenty times before he was able to retreat to the safety of the kitchenette and call the control center for reinforcements.

Defendant testified that he did indeed hit Officer Buzas, but that he did so in self-defense. He indicated that he walked out of the television room at approximately 11:30 p.m. with three or four other inmates to return to his cell. As he approached the desk, he felt a “shove” in his back, thought someone was about to attack him, and instinctively and reflexively punched the person standing behind him. When he realized it was Officer Buzas, he “backed down.” He testified that he did not lead any group of inmates into the riot, did not use any profanity, and did not hit Officer Buzas with the intent to do so. Officers Slagle and Buzas testified that no one pushed defendant, that no one struck defendant, and that no one gave defendant any reason to fear for his safety.

I

Defendant first claims that he was denied a fair trial by the prosecutor's elicitation of testimony regarding defendant's religious and ethnic affiliations. Under the circumstances of this case, we disagree.

Questioning a witness with regard to the subject of religious beliefs or opinion is forbidden during a criminal proceeding. MRE 610; MCL 600.1436; MSA 27A.1436; *People v Vasher*, 449 Mich 494, 503; 537 NW2d 168 (1995). Likewise, questioning a witness to explore another individual's religious opinions and beliefs is equally offensive. *People v Bouchee*, 400 Mich 253, 264; 253 NW2d 626 (1977). The prohibition does not, however, extend to questions calculated to impeach the credibility of a defendant or his proffered defense, *id.* at 262, as long as the questions are limited so as not to intrude into the realm of religious belief. *People v Jones*, 82 Mich App 510, 515; 267 NW2d 433 (1978).

Here, the prosecutor asked Officer Slagle whether there are groups of inmates in prison who band together. Officer Slagle indicated that groups have formed based on religion, race, and national origin. He also indicated that the group of inmates involved in the ruckus on the night in question were all black. On cross-examination, Officer Slagle testified that one religious group within the prison is known as the "Mulantics." On redirect examination, Officer Slagle explained that the Mulantics are a religious group that exists only within the prison, that the group utilizes a "chain of command," and that its members are primarily African-American.

A close examination of the record shows that it was defense counsel who first asked during his cross examination of Officer Slagle whether defendant was a member of the Mulantics. Officer Slagle indicated that he did not know whether defendant was a member. Then, during direct examination of defendant, counsel asked defendant whether he was a member of the Mulantics. Defendant denied any affiliation with the Mulantics. On cross-examination, defendant denied talking to Inspector Mascorro about possible involvement of the Mulantics in this incident on behalf of defendant. On rebuttal, Inspector Mascorro testified that defendant indicated that he was a Mulantic.

A review of the record reveals that the prosecutor's questions about religion, as well as the questions about race, were designed to undermine the credibility of defendant's theory that he feared the Mulantics and other groups and that he acted in self-defense. This line of defense entitled the prosecutor to seek to demonstrate that defendant was a member, if not the leader, of the group of rioters and, therefore, that he had no reason to fear for his safety. Further, the testimony elicited did not reveal defendant's opinion or belief regarding the subject of religion. *People v Leonard*, 224 Mich App 569, 594-595; 569 NW2d 663 (1997). Hence, there is no error requiring reversal.

II

Defendant next contends that he was denied a fair trial by the prosecutor's elicitation of testimony regarding defendant's prison security level. Defendant did not object to the allegedly improper questioning. Unpreserved prosecutorial misconduct is reviewed for manifest injustice. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). Because a curative instruction could have cured any prejudice resulting from the questioning, manifest injustice is not present. *People v Rivera*, 216 Mich App 648, 651; 550 NW2d 593 (1996).

III

Defendant contends that the prosecutor deprived him of his constitutional right to a speedy trial when he neglected to file charges until thirteen months after the date of the assault. Defendant's argument is misplaced. The right to a speedy trial does not attach until after the government either arrests or charges the individual, thereby rendering him an individual accused of a crime. *United States v Marion*, 404 US 307, 313; 92 S Ct 455; 930 L Ed 2d 468 (1971); *People v Rosengreen*, 159 Mich App 492, 506 n 1; 407 NW2d 391 (1987). Moreover, defendant has failed to establish that the prosecutor deprived him of due process by waiting to file charges as nothing in the record suggests that the delay deprived defendant of his opportunity to present a defense. *People v Wyngaard*, 151 Mich App 107, 111; 390 NW2d 694 (1986).²

Affirmed.

/s/ Michael J. Kelly

/s/ Roman S. Gibbs

/s/ E. Thomas Fitzgerald

¹ As a result of the impact, Officer Buzas suffered a facial fracture that required reconstructive surgery and a plate to repair and ultimately developed posttraumatic stress disorder.

² Defendant also claims that the principle of due diligence requires a prosecutor to promptly pursue "post-complaint investigations." Because defendant has failed to cite any relevant authority in support of this claim, however, the claim is abandoned. *People v Canter*, 197 Mich App 550, 563; 496 NW2d 336 (1992).