

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAJUAN R. EVERETT,

Defendant-Appellant.

UNPUBLISHED

March 26, 1999

No. 203816

Recorder's Court

LC No. 96-006588

Before: Neff, P.J., and Kelly and Hood, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions for first-degree criminal sexual conduct, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a) (victim under the age of thirteen), and felonious assault, MCL 750.82; MSA 28.277. Defendant was sentenced to fifteen to thirty years' imprisonment for the first-degree criminal sexual conduct conviction and two to four years' imprisonment for the felonious assault conviction. We affirm.

Defendant first argues that the trial court abused its discretion when it allowed the prosecution to introduce bad acts evidence in contravention of MRE 404(b). We disagree. Admission of evidence is within the trial court's discretion and will not be reversed on appeal absent an abuse of that discretion. *People v Figgures*, 451 Mich 390, 398; 547 NW2d 673 (1996). In the present case, defendant signed a constitutional rights waiver form and also signed an inculpatory written statement. On direct examination, defendant claimed that he was illiterate and that the only reason he signed the forms was because "[i]t was like really my first time really like being locked up, you know, and I was so scared I even signed with my wrong hand." During cross-examination, the prosecution introduced evidence that defendant had signed a constitutional rights waiver form in an unrelated arson case. This evidence was introduced to impeach defendant's assertion that he did not understand the waiver and that he had not had previous experience with the law. Such evidence was proper to rebut and impeach defendant's own testimony as to his state of mind. *Figgures, supra*, 451 Mich 399. "[W]hen a defendant seeks to controvert the truth-seeking functions of a criminal trial, the introduction of otherwise inadmissible evidence is permissible to contradict his false testimony." *People v Williams*, 93 Mich App 236, 242; 287 NW2d 184 (1978).

Defendant next argues that the trial court improperly instructed the jury when it gave a flight instruction and when it gave the jury written instructions as to the elements of the crimes charged, but not the defenses of alibi and identification. We disagree. Jury instructions are to be read as a whole rather than extracted piecemeal to establish error, and even if somewhat imperfect, there is no error if the instructions fairly presented the issues to be tried and sufficiently protected the defendant's rights. *People v Daniel*, 207 Mich App 47, 53; 523 NW2d 830 (1994).

There was evidence presented at trial which supported the court's reading of CJI2d 4.4 as to flight. The victim testified that defendant ran away after he attacked her. CJI2d 4.4 clearly indicates that flight from the "alleged crime" itself warrants such an instruction. Defendant also takes issue with the fact that the court reinstructed the jury via written instructions as to the elements of the crimes without also including written instructions as to the applicable defenses. Throughout deliberations, the jury sent the court many notes and the jury was reinstructed as to the elements of the crimes on more than one occasion. The jury finally requested that the court give it written instructions. The court agreed to give instructions for those points of law that the jury specifically requested. The jury did not request written instructions as to the defenses. "The extent of additional instructions to the jury is within the discretion of the trial court." *People v Perry*, 114 Mich App 462, 467-468; 319 NW2d 559 (1982). As long as the trial court adequately informed the jury of the defenses during the initial instruction, it was under no affirmative obligation to redefine the defenses absent a request by the jury. *Perry, supra*, 114 Mich App 468.

Finally, defendant argues that he was denied a fair and impartial trial where the prosecutor made two improper statements during closing argument which called for the jury to convict defendant as part of their civic duty and which acted to shift the burden of proof from the prosecution to defendant. We disagree. Whether a defendant received a fair and impartial trial is the test for prosecutorial misconduct. *People v Paquette*, 214 Mich App 336, 342; 543 NW2d 342 (1995).

The prosecutor stated, "that outrage that Mr. Taylor felt he said he was going to leave it to the law. . . He said he'd leave it to the law, the criminal justice system, and ultimately here and I'm asking you to find him guilty of raping [the victim], guilty of breaking into the home and guilty of assaulting her with a weapon. Give her back some sense of security." This argument was not improper. It did not inject issues broader than the guilt or innocence of defendant or encourage the jurors to suspend their own judgment. *People v Truong (After Remand)*, 218 Mich App 325, 340; 553 NW2d 692 (1996). Even if the argument was improper, defendant was not denied a fair trial where the civic duty argument was cured when the court instructed the jury that the arguments of counsel were not evidence. *People v Stimage*, 202 Mich App 28, 30; 507 NW2d 778 (1993).

The prosecutor also stated, "[n]ow, Mr. Everett has access to people who would be disinterested witnesses, the man who lent him the bike." Defendant maintains that the argument improperly shifted the burden of proof. However, once a defendant has presented an alibi defense, the prosecutor may comment on the defendant's failure to produce corroborating witnesses. *People v Holland*, 179 Mich App 184, 190; 445 NW2d 206 (1989). Even if the prosecutor's comment was improper, defendant was not denied a fair trial where "the jury was properly instructed concerning the

burden of proof . . . [and] in light of the strong evidence supporting defendant's convictions." *People v Spivey*, 202 Mich App 719, 724; 509 NW2d 908 (1993).

Affirmed.

/s/ Janet T. Neff

/s/ Michael J. Kelly

/s/ Harold Hood