STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 23, 1999
v	No. 205909 Bay Circuit Court
GARY ALEN CARTER, Defendant-Appellant.	LC No. 96-001446 FH

Before: Fitzgerald, P.J., and Doctoroff and White, JJ.

PER CURIAM.

Defendant was convicted by a jury of arson of real property, MCL 750.73; MSA 28.268, and burning insured property, MCL 750.75; MSA 28.270. He was sentenced to concurrent prison terms of twenty-four to 120 months for each conviction. Defendant appeals as of right. We affirm.

I

Defendant's primary theory at trial was that he was the victim of repeated acts of vandalism that culminated in the arson. He argues that the trial court abused its discretion by not allowing defendant's mother to be recalled as a witness to testify regarding repeated acts of vandalism directed at defendant before the fire. We disagree. No evidence was offered linking any vandalism against defendant with the arson. During an offer of proof, defendant's mother indicated that she could not say, with certainty, *when* the vandalism occurred. Further, she had no knowledge regarding who had committed the vandalism and her testimony would not have provided a link between the vandalism and the fire. The trial court did not err in determining that this testimony would be a needless waste of time. MRE 611(a).

II

Defendant next claims that, on rebuttal, the prosecution improperly argued facts not in evidence and advanced new theories of the case to the jury. Defendant claims that the prosecutor discussed impermissible hearsay testimony that a red car, perhaps similar to defendant's car, may have been seen in the restaurant parking lot on the night of the fire. However, the disputed evidence was presented at

trial by *defense counsel* over the *prosecutor's* repeated hearsay objections. A party may not request a certain action of the trial court and then argue on appeal that such action resulted in error. *People v McCray*, 210 Mich App 9, 14; 533 NW2d 359 (1995). Further, a party waives review of the admission of evidence which he introduced. *City of Troy v McMaster*, 154 Mich App 564, 570-571; 398 NW2d 469 (1986); *People v Williams*, 84 Mich App 226; 269 NW2d 535 (1978). During closing, defense counsel explained why the evidence regarding a red car in the restaurant parking lot was exculpatory. In response, the prosecution explained why it incriminated defendant. This was proper rebuttal. MCR 2.507(E).

This Court has considered each of defendant's additional claims of prosecutorial misconduct within the context in which the prosecutor's statements were made. *People v LeGrone*, 205 Mich App 77, 82; 517 NW2d 270 (1994). Each of the prosecutor's rebuttal remarks was made in response to arguments raised by defense counsel. This is the proper scope of rebuttal, MCR 2.507(E), and therefore, defendant was not deprived of a fair and impartial trial by any prosecutorial misconduct. *People v Paquette*, 214 Mich App 336, 342; 543 NW2d 342 (1995).

III

Defendant next claims that the prosecution introduced evidence of defendant's cocaine use without providing proper notice as required by MRE 404(b), and that the prosecutor also used this evidence for an improper purpose. MRE 404(b) allows the use of evidence of other crimes, wrongs, or acts so long as that evidence is used for a proper purpose – specifically, it cannot be used to show that a defendant acted in conformity with the character traits evidenced by his prior acts. MRE 404(b)(1). When such evidence is offered, the prosecutor is required to provide reasonable notice "of the general nature of any such evidence it intends to introduce at trial and the rationale . . . for admitting the evidence." MRE 404(b)(2).

Defendant states that the prosecutor provided notice of intent to offer evidence of marijuana trafficking but did not provide notice of intent to offer evidence of cocaine use. However, the prosecutor was merely required to provide notice of the *general nature* of the evidence he intended to offer, MRE 404(b)(2), and this notice requirement is to prevent unfair surprise and to offer the defense "the opportunity to marshal arguments regarding both relevancy and unfair prejudice." *People v VanderVliet*, 444 Mich 52, 89 n 51; 508 NW2d 114 (1993), modified 445 Mich 1205 (1994). The notice spoke of defendant's involvement in the "trafficking of controlled substances" and the general nature of the disputed evidence was defendant's drug activities. Defendant was also aware that his former roommate would be called as a witness for the prosecution. Therefore, defendant had adequate notice that his drug activities, both trafficking and use, could be revealed at trial. Additionally, the arguments raised in defendant's motion to exclude the drug trafficking evidence and those raised during trial objecting to the evidence of cocaine use were substantially the same. Thus, there is no evidence that defendant was denied the opportunity to marshal appropriate arguments due to unfair surprise. *VanderVliet, supra*.

We reject defendant's argument that evidence of his drug involvement was used for an improper purpose. The prosecution used the evidence of defendant's cocaine use for the same purpose as the

evidence of defendant's marijuana trafficking activities, that is, to show that defendant was financially motivated to set the fire. Motive is a proper purpose for the use of other-acts evidence. MRE 404(b)(1).

Defendant also takes issue with the prosecutor's suggestion during rebuttal that defendant may not have been thinking clearly on the night of the fire due to the influence of drugs. As defendant notes, this statement was not connected to the stated purpose of showing motive. However, the prosecutor's remarks must be read as a whole within the context in which they were made. *People v Reed*, 449 Mich 375, 398-399; 535 NW2d 496 (1995). Prosecutors are generally given considerable latitude during closing arguments and may comment on the evidence and all reasonable inferences drawn from the evidence relating to the theory of the case. *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995). This was a proper comment on the testimony that defendant and an acquaintance had smoked marijuana before the fire was set. The record does not suggest that the jury was encouraged to use evidence of defendant's cocaine use for an improper purpose.

Additional comments made with regard to the character of the witnesses did not amount to prosecutorial misconduct. This Court has held that no error will be found where the prosecutor's remarks are made primarily in response to matters raised by defense counsel during closing arguments. *People v Foster*, 77 Mich App 604, 614; 259 NW2d 153 (1977). In this case, defense counsel attempted to persuade the jury that the prosecution witnesses were not credible, commenting on the witnesses' moral character, drug use, and other illegal activities. Counsel suggested that the witnesses had more logical motives to burn the restaurant than defendant. The prosecutor's rebuttal did not suggest that the jury should convict defendant because he used drugs or had a bad character. Rather, the comments were made to rebut the argument that the witnesses were not credible because of their bad character. Further, the statements suggested that these witnesses, because of their characters and lifestyles, were precisely the people that defendant *would* approach to help with the fire – a comment on the witnesses' credibility. While the prosecutor may not vouch for a witness' credibility, he or she may suggest reasons why the jury should find the witness credible. *People v Howard*, 226 Mich App 528, 548; 575 NW2d 16 (1998); *People v Launsburry*, 217 Mich App 358, 361, 551 NW2d 460 (1996).

IV

Lastly, defendant asserts that he was denied a fair trial as a result of the cumulative effect of the errors that occurred throughout the trial. Because defendant's individual claims are without merit, there is no cumulative effect to consider.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Martin M. Doctoroff
/s/ Helene N. White