

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENT CRENSHAW,

Defendant-Appellant.

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UNPUBLISHED  
November 2, 1999

No. 210028  
Wayne Circuit Court  
LC No. 97-004421

Before: Whitbeck, P.J., and Gribbs and White, JJ.

PER CURIAM.

A jury convicted defendant-appellant Kent Crenshaw of armed robbery, MCL 750.529; MSA 28.797, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The trial court sentenced Crenshaw to six to twenty years' imprisonment for the armed robbery conviction, plus the mandatory two-year, consecutive term for felony-firearm. Crenshaw appeals by right and we affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

**I. Basic Facts and Procedural History**

During jury selection, one of the prospective jurors, Erica Torres, stated that she had seen Crenshaw on television during the previous month. Specifically, Torres stated that it was a television report of a crime that was committed at a convenience store or a mini-mart, and that Crenshaw was shown as a person the police were looking for in connection with that crime. Torres was mistaken in this regard, as Crenshaw was not charged with any crime other than the instant offenses, which did not involve a convenience store or mini-mart. Moreover, Crenshaw was already in jail awaiting trial during the month that Torres supposedly saw Crenshaw identified as a crime suspect at large on television.

The trial court attempted to explain to Torres, as well as to all of the other prospective jurors present, that Crenshaw could not have been the person whom Torres saw on television and that Crenshaw is not charged with any other offenses. Nevertheless, Torres stated that she continued to believe that she saw Crenshaw on television:

THE COURT: All right. Let me tell you this, Miss Torres, and really for the benefit of all the rest of the prospective jurors, that Mr. Crenshaw who you pointed to is not really a suspect in any other case other than this one.

JUROR NO. 2: Yes, sir.

THE COURT: And, you know, I'm a hundred percent convinced that you are mistaken in terms of, you know, believing that you saw Mr. Crenshaw on television. Because like I said, he's not a suspect in any other case other than this one that he's on trial for. And there's some other information that I know and that the lawyers know that would indicate that you didn't — that the person you saw on television was not Mr. Crenshaw.

JUROR NO. 2: Okay. Sorry. But I mean what I'm saying is, because what you want is honesty and you want to know whether or not I would be able to judge freely, first all, right now if I'm sitting here thinking that I seen this man and I seen him and they accused him of something, I'm not going to be able to, you know, judge because I'm going to think well maybe there's a possibility that that's the guy that I seen last month on television.

THE COURT: And I'm telling you you're mistaken.

JUROR NO. 2: I apologize. I'm sorry. That's why I didn't want to make any comment because I knew it was going to corrupt the court.

THE COURT: Well, if you actually thought you saw him in some context, we want to know about that, but I'm telling you that, you know, based on all the information that I know, that he's not a suspect in any other case and you're mistaken about it. Now if you don't want to accept that and you feel convinced in your mind and in your heart that Mr. Crenshaw is the person that you saw on television as a suspect in some other case, if you're convinced of that no matter what I say, then yes, you can't be fair and impartial juror in this case. But if you will accept the fact that you're mistaken about that, then, you know, and that Mr. Crenshaw is not a suspect and if you will accept that, then you can sit and be a fair and impartial juror on that in this case. But if you can't accept that, then you can't be.

JUROR NO. 2: Okay.

THE COURT: So will you accept that?

JUROR NO. 2: Uh-uh.

THE COURT: You don't accept that? You think that Mr. Crenshaw is the person that you saw?

JUROR NO. 2: Yes.

THE COURT: No matter what I say?

JUROR NO. 2: I feel like I'm disrespecting you.

THE COURT: No. I want you to be honest with me.

JUROR NO. 2: Yes. That's why I didn't want to make any comment. I didn't want to.

The trial court then asked all of the other prospective jurors present whether they "take issue" with his explanation or believe that Crenshaw is in fact the person who Ms. Torres saw on television:

THE COURT: Okay. All right. And I want to ask all the rest of you prospective jurors, those of you seated in the jury box, those of you seated in the box, I have told Miss Torres that she did not see him on television and in fact she's mistaken about who she saw on television and that it wasn't Mr. Crenshaw. Do any of you take issue with what I'm saying? Or do any of you believe that Mr. Crenshaw was in fact the person that Miss Torres saw on television in regard to some other case? If you believe that, please raise your hand. And I'm asking those of you seated in the jury box and those of you seated in the gallery. If you believe that Mr. Crenshaw was actually a person that was seen on television, please raise your hand.

Only one prospective juror raised his hand, Thomas Sheldon, who was seated in the gallery at that time. The trial court subsequently excused Ms. Torres for cause and stated that it would also excuse Sheldon for cause if Sheldon were ever called to the jury box.

During a break in the voir dire that afternoon, Crenshaw's counsel asked the trial court to strike the entire jury panel "as a mistrial," on the ground that Crenshaw was prejudiced by Torres' remarks before the entire jury panel that she had seen Crenshaw on television as a suspect for another crime. Defense counsel placed his argument on the record as follows:

MR. WASKE: Thank you, Judge. My only record is this. That somewhere down the road an appellate court might have the opportunity review this issue, the relates to the comment that Miss Torres made. There was a subtle implication that Mr. Crenshaw may have been seen in one of those most wanted pictures or one of the news media that were doing some kind of story in the last several months. As we all know — we discussed at the bench — Mr. Crenshaw has in fact been incarcerated on this case actually back since April really, because there's an assault and battery case here or assault and battery that he had spent some time incarcerated involving the same complainant in this case. But my concern is that the comments that she made — and even though she was not affected by what was said and we excused her, it's the other

people in the panel. One gentleman raised his hand as well and was willing to say, you know, he would be affected by it. We don't know how many other people are subconsciously thinking this, and it may in effect be a problem later on down the road. I'm going to ask you for purposes of the appellate record at this point to strike the entire panel as a mistrial. The statement is certainly not something that anyone could have anticipated this particular juror saying. It caught all of us by surprise. I'm not sure that there's really anything we can do to alleviate the potential prejudice at this point. If we tell them that Mr. Crenshaw has in fact been incarcerated, that may in fact make somebody feel that well, you know, okay he didn't do it then, but the fact he's sitting in jail could have some prejudice and influence that may have been less of a prejudice in the short run than, you know, the concept that he's out there on television being looked for. So that's my point, I certainly leave the decision to you, but that would be my request.

The trial court denied the request, stating that any prejudice was cured because Torres was excused for cause and all the remaining prospective jurors, except for one who would also be excused for cause, indicated they accepted the fact that Torres was mistaken about seeing Crenshaw on television:

THE COURT: And I indicated here, and I did—I mean I told her that she was wrong about it. And every other juror accepted the fact other than one person. And I excused her because she was kind of insistent on believing that she saw him, and really told her that she was mistaken about it. So to me all the rest of the jurors accepted that fact other than one other person. And if Mr. Sheldon ever gets into the jury box, I'm going to excuse him for cause. So I think that the problem she generated is cured in the way that I handled the subsequent voir dire. All right. We will be in recess for lunch until 1:30.

Voir dire continued for another hour and 45 minutes that afternoon. When a jury was finally selected, Crenshaw's counsel expressed satisfaction with the jury, stating, "On behalf of Mr. Crenshaw I'm satisfied with this jury. Pass for cause and peremptories."

## II. Abuse of Discretion

### A. Crenshaw's Argument

On appeal, Crenshaw argues that the trial court abused its discretion in denying defense counsel's motion to strike the entire jury panel as a mistrial based upon Torres' claim that she had seen Crenshaw on television as a person wanted in connection with another crime. Specifically, Crenshaw contends that Torres' suggestion that Crenshaw was involved in other criminal behavior contaminated the entire panel. In this regard, Crenshaw notes that there is a substantial body of law that supports the notion that "juror knowledge of a defendant's alleged or actual past criminal behavior can and does affect the impartiality of the jury by diverting the jury from deciding guilt or innocence based only on the evidence before it in the particular case."<sup>1</sup>

## B. Standard of Review

We review double jeopardy questions de novo. *People v Walker*, 234 Mich App 299, 302; 593 NW2d 673 (1999).

## C. The Trial Court's Decision

In our view, Crenshaw's argument lacks merit. Contrary to Crenshaw's argument, this is not a case where jurors were informed of a defendant's alleged or actual criminal conduct. Instead, the prospective jurors in this case were merely informed of *someone else's* alleged or actual criminal conduct, based upon Torres' discussion of a television report that she mistakenly thought included Crenshaw. The trial court specifically advised Torres and all the other prospective jurors that the television report was about someone else, not Crenshaw, and that Crenshaw was not a suspect in any other cases. Crenshaw's prior incarceration was never mentioned.

The trial court also specifically asked all the prospective jurors to indicate whether any of them believed the television report was, in fact, about Crenshaw despite the court's assurances to the contrary. Only two of the prospective jurors indicated that they did not accept or "took issue" with the trial court's explanation that the television report was about someone else, i.e, Ms. Torres and Mr. Sheldon. The trial court appropriately excluded those two persons from the jury. Because the remaining members of the jury panel indicated they did not believe the television report was about Crenshaw, the trial court reasonably concluded that there was no resulting prejudice or taint warranting a mistrial. The trial court was entitled to rely upon the prospective jurors' responses to voir dire questioning. See *People v Jendzejewski*, 455 Mich 495, 517; 566 NW2d 530 (1997); *People v DeLisle*, 202 Mich App 658, 663; 509 NW2d 885 (1993).<sup>2</sup>

Affirmed.

/s/ William C. Whitbeck

/s/ Roman S. Gribbs

/s/ Helene N. White

<sup>1</sup> The prosecution raises a question concerning whether the issue is preserved by noting defense counsel's expression of satisfaction with the jury selected. Ordinarily, a party's expression of satisfaction with the jury at the close of the voir dire examination operates to waive any challenge to the composition of the jury that is impaneled and sworn. *People v Hubbard (After Remand)*, 217 Mich App 459, 466; 552 NW2d 493 (1996). However, this is not the case when the party has already made an unsuccessful challenge to the impartiality of the jury and the subsequent expression of satisfaction is more of an exercise in practicality, given the trial court's earlier adverse ruling and the potential for juror alienation, than a relinquishment of the previous challenge. *Id.* at 466-467. Here, as in *Hubbard*, there is nothing in the record to suggest that defense counsel's expression of satisfaction

with the jury was intended to waive his earlier objection that Torres' remarks tainted the entire jury panel.

<sup>2</sup> In this regard, we note that Crenshaw has cited Michigan Supreme Court case authority that is not precedentially binding because no majority of the justices concurred in the cited reasoning. See *People v Tyburski*, 445 Mich 608, 628; 518 NW2d 441 (1994) (Mallett, J.).