

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRIAN L. REDDICK,

Defendant-Appellant.

UNPUBLISHED

January 28, 2000

No. 210729

Wayne Circuit Court

Criminal Division

LC No. 97-005951

Before: Zahra, P.J., and Saad and Gage, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of second-degree murder, MCL 750.317; MSA 28.549, for which he was sentenced to imprisonment for twenty to thirty years. We affirm.

I. FACTS AND PROCEEDINGS

Plaintiff charged defendant with the murder of Tracey Taniece Toby, the mother of defendant's child. At trial, the evidence established that defendant, Lonnie White, and another man drove to Toby's home on July 12, 1997. Defendant explained to White that he intended to kidnap Toby and her friend, Tamira Jones. Defendant's plan fell through because Toby had guests at her house. However, in the early morning hours of July 13, Jones heard defendant and Toby exchange angry words and saw them leave Toby's house together. Later that day, defendant showed White a body that was in the trunk of his car. Defendant told White the dead person was his "baby's mother" and explained that he had put duct tape over Toby's mouth, beat her, and then strangled her to death. Defendant believed Toby had stolen a large sum of money from his home. Defendant warned White that he would "take out" White and his family if White told anyone about the crime. After police arrested White for Toby's murder, White revealed that defendant was the murderer. White testified against defendant at trial pursuant to a plea agreement guaranteeing him immunity from charges arising from his participation in the murder.

II. ANALYSIS

A

On appeal, defendant argues that he was denied a fair trial because the prosecutor elicited evidence that he had planned to kidnap Toby and her friend just prior to the murder. Defendant contends that this evidence runs afoul of MRE 404(b), which prohibits the use of evidence of other wrongs “to prove the character of a person in order to show action in conformity therewith.” We disagree.

Because defendant failed to preserve this evidentiary issue by specifically and timely objecting to its admission at trial, our review is precluded unless the error could have been decisive of the outcome or unless it falls under the category of cases where prejudice is presumed or reversal is automatic. *People v Grant*, 445 Mich 535, 553; 520 NW2d 123 (1994); *People v Nimeth*, 236 Mich App 616, 625; 601 NW2d 393 (1999). Evidence that may implicate a defendant in another crime separate from the crime with which he is charged is not necessarily inadmissible. “A party should ‘be able to give the jury an intelligible presentation of the full context in which the disputed events took place.’” *People v Sholl*, 453 Mich 730, 741; 556 NW2d 851 (1996). In this regard, evidence of other criminal acts is admissible when so blended or connected with the charged crime that proof of the other act explains the circumstances of the charged crime. *Id.* at 742.” *People v Warren*, 228 Mich App 336, 342; 578 NW2d 692 (1998).

Here, the evidence of the kidnapping scheme was admissible. Defendant’s plot to kidnap Toby was connected with her eventual murder and therefore the prosecutor properly introduced the kidnapping scheme in order to explain the circumstances of the crime to the jury. Evidence showed that defendant intended to harm Toby, most likely because he believed she had stolen his money. The thwarted kidnapping plot was part of the entire criminal transaction in this case, which ultimately involved defendant taking Toby from her house, restraining her, beating her, and strangling her to death. Testimony established that defendant used forceful language when he and Toby left her house, which suggests that, true to his original plan, defendant took Toby from her home by overcoming her will. Moreover, the abortive kidnapping attempt occurred within a day of the completed offense, revealing that defendant never strayed from his intended course but merely waited for a more opportune occasion. Thus, the initial kidnapping attempt was not a distinct offense or occurrence, but merely the first episode in defendant’s murder of Toby. Because this evidence was properly admitted, there is no basis for reversal.

B

Next, defendant contends that the prosecutor committed misconduct by questioning White about his plea agreement and eliciting testimony that the agreement required White to testify “truthfully” against defendant. Defendant contends, erroneously, that the prosecutor used this line of questioning to imply that the government had special knowledge that White’s testimony was truthful.

Because defendant failed to object to the prosecutor's alleged misconduct at trial, review of this issue is precluded (1) unless a curative instruction could not have eliminated the prejudicial effect, or, (2) if our refusal to consider this issue would result in a miscarriage of justice. *People v Godbold*, 230 Mich App 508, 521; 585 NW2d 13 (1998). Reference to a plea agreement containing a promise of truthfulness is not grounds for reversal unless the prosecutor suggests that the government has some special knowledge, not known to the jury, that the witness' testimony is truthful. *People v Bahoda*, 448 Mich 261, 276; 531 NW2d 659 (1995). Here, the prosecutor did not engage in this improper tactic; he simply used his questions to reveal the terms of White's plea agreement to the jury. Further, if there had been any implication that the prosecutor had special knowledge of White's veracity, defendant could have requested the trial court to cure any error by reminding the jury of its role as the sole factfinder. See *People v McElhaney*, 215 Mich App 269, 284; 545 NW2d 18 (1996). There is no merit to defendant's argument that the prosecutor's questions denied him a fair trial.

C

Finally, defendant says his trial counsel was ineffective because he failed to discover Lonnie White's guilty plea to the felony of unlawfully driving away an automobile (UDAA), MCL 750.413; MSA 28.645. Defendant submits that his attorney should have used this conviction to impeach White's credibility as a witness under MRE 609(a)(2), which, under certain circumstances, allows a party to attack the credibility of a witness with evidence that the witness has been convicted of a crime containing an element of theft. Defendant's argument is without merit.

Defendant was obligated to establish a testimonial record at the trial court level to support with evidence his claim and exclude hypotheses consistent with the view that he received adequate representation at trial. *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999). Because defendant failed to do this, our review of this issue is limited to errors apparent from the record, *People v Barclay*, 208 Mich App 670, 672; 528 NW2d 842 (1995). Here, there is no support on the record for defendant's allegation that his trial counsel was unaware of White's record. Accordingly, we cannot rule out the equally likely possibility that defense counsel knew about the UDAA conviction, but anticipated that the trial court would find that the UDAA conviction lacked "significant probative value on the issue of credibility," as MRE 609(a)(2) requires. Defendant himself has neglected to demonstrate the significant probative value of this allegedly undiscovered evidence. Thus, he has not overcome the presumption that defense counsel's decision as to this issue was a matter of sound trial strategy. See *Hoag*, *supra* at 5-6.

Additionally, defendant has not shown that defense counsel's failure to use White's conviction for impeachment purposes made any difference in the outcome of the trial. See *id.* At trial, White came across as a shady character of dubious credibility. Evidence showed that he aided defendant by helping him to hide Toby's body and keep her murder a secret. White reported defendant to the police only after they arrested him for Toby's murder and told him that defendant was prepared to blame him for the killing. Apparently, White testified against defendant only because the prosecutor guaranteed him immunity from prosecution for his role in the crime. Despite White's obviously flawed credibility, the jury apparently believed his version of events and chose to convict defendant of second-degree murder. It is highly doubtful the jury would have reached a different decision had it also known that White was a

convicted car thief. Accordingly, we reject defendant's contention that he received ineffective assistance of trial counsel.

Affirmed.

/s/ Brian K. Zahra

/s/ Henry William Saad

/s/ Hilda R. Gage