

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TAVARE DELAN BROWN,

Defendant-Appellant.

UNPUBLISHED

August 11, 2000

No. 215667

Kent Circuit Court

LC No. 97-010105-FC

Before: Smolenski, P.J., and Zahra and Collins, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529; MSA 28.797. He was sentenced to 3¹/₂ to twenty years' imprisonment. Defendant appeals as of right. We affirm.

Defendant argues that three instances of prosecutorial misconduct individually or collectively deprived him of his constitutional right to a fair trial. Generally, we review claims of prosecutorial misconduct to determine whether the prosecutor's remarks denied the defendant a fair and impartial trial. *People v Rice (On Remand)*, 235 Mich App 429, 434-435; 597 NW2d 843 (1999). We view the prosecutor's remarks in context and on a case by case basis. *Id.*

Defendant contends first that he was denied a fair trial because the prosecutor questioned him regarding the factual basis of his two prior misdemeanor convictions. On direct examination, defendant acknowledged that he had pleaded guilty to two misdemeanor counts of providing false information to a police officer. On cross-examination, the prosecutor attempted to confirm those convictions. Defendant objected and was overruled, but the court cautioned the prosecutor that she could mention the matter only once. After confirming the fact of the convictions, the prosecutor asked defendant whether he had told the police he was somebody that he wasn't, and defendant acknowledged that he had. Defense counsel objected again; the court overruled the objection, but instructed the prosecutor to go no further.

Pursuant to and under the criteria set forth in MRE 609, a witness' credibility may be impeached with evidence of prior convictions. *People v Nelson*, 234 Mich App 454, 460; 594 NW2d

114 (1999). In peremptorily reversing this Court's decision in *People v Van Dorsten*, 96 Mich App 356; 292 NW2d 134 (1979), our Supreme Court held that

[i]t is improper to impeach a defendant by telling the jury only of the existence of unnamed prior felony convictions, without providing the names of the offenses. It is the nature, rather than the fact, of a prior felony conviction which the jury is to use in its evaluation of credibility. [*People v Van Dorsten*, 409 Mich 942; 298 NW2d 421 (1980).]

At the same time, our Supreme Court has indicated that an examiner's questions regarding a witness's crimes related to dishonesty "must be limited to the fact of conviction and the nature of the crime; he may not go into the details or circumstances surrounding the crime" *People v Rappuhn*, 390 Mich 266, 274 n 2; 212 NW2d 205 (1973), quoting *People v Wynn*, 44 Cal App 2d 723, 732 (1941); see also *People v Rappuhn*, 66 Mich App 17, 21; 238 NW2d 400 (1975).

Defendant contends that the prosecutor's inquiry regarding the factual basis for his convictions went beyond establishing the nature of the crime and impermissibly elicited details surrounding the crime. While we agree that the prosecutor's inquiry did elicit a factual detail regarding defendant's convictions, defendant has failed to establish any unfair prejudice from the alleged misconduct. The court did not allow the prosecutor to go into any further detail, and the fact that the jury learned that defendant had previously *lied about his identity* was not likely to cause any more prejudice to defendant than their knowledge of the general fact that defendant had lied to the police, a fact that was properly elicited under MRE 609. Defendant's convictions for providing false information to the police clearly involved dishonesty and thus were highly relevant to impeaching his credibility. *People v Allen*, 429 Mich 558, 593-594; 420 NW2d 499 (1988). At the same time, the crime of which defendant was previously convicted, whether identified as supplying false information to the police, or as lying to police about his identity, was not similar to that with which he was charged in this case. Thus, the potential for unfair prejudice, i.e., that the jury would use the evidence to conclude that because defendant previously lied about his identity, he likely committed the charged crime, was low. See *Id.* at 589, 605-606. Moreover, this is not a case where the prosecutor, in inquiring into the factual basis of defendant's convictions, was alluding to "higher original charges" or prior arrests "which did not result in conviction." See *Rappuhn, supra* at 21. Further, the court provided an instruction specifically cautioning the jury with regard to proper use of the evidence. Accordingly, we conclude that the prosecutor's inquiry did not deny defendant a fair trial.

Defendant further contends that the prosecutor engaged in misconduct when she elicited from defendant's girlfriend testimony that he was unemployed at the time of the robbery. Because defendant did not object at trial to the alleged misconduct, appellate review is precluded unless the misconduct was so egregious that a curative instruction could not have eliminated possible prejudice or failure to consider the issue would result in a miscarriage of justice. *People v Paquette*, 214 Mich App 336, 341-342; 543 NW2d 342 (1995). Evidence of poverty or unemployment to show motive is generally not admissible because its probative value is outweighed by unfair prejudice. *People v Stanton*, 97 Mich App 453, 460; 296 NW2d 70 (1980). Here, however, the reference to defendant's unemployed status was brief and the prosecutor did not mention the fact in her closing. We conclude, therefore, that

a curative instruction could have prevented any possible prejudice and that manifest injustice will not result from our failure to review this issue. *Paquette, supra*.

Defendant also contends that the prosecutor's statement during her rebuttal argument that none of defendant's girlfriend's alibi testimony was supported by "any" fact constitutes prosecutorial misconduct. Again, defendant did not object at trial to the alleged misconduct. While the prosecutor's statement was overbroad and not technically accurate, we note that the prosecutor went on to discuss the absence of factual support for specific portions of the alibi testimony. Further, given the court's instruction to the jury that the "lawyers' statements and arguments are not evidence," we conclude that manifest injustice will not result from our failure to further consider this issue. *Paquette, supra*.

Finally, defendant contends that, even if the separate issues are not sufficient independently to justify a new trial, the combined impact of the errors deprived defendant of his constitutional right to a fair and impartial trial. We disagree. In view of the minimal prejudice resulting from the prosecutor's remarks, and the court's instructions, we conclude that even when considered collectively, the comments did not deprive defendant of a fair trial.

Affirmed.

/s/ Michael R. Smolenski

/s/ Brian K. Zahra

/s/ Jeffrey G. Collins