STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 12, 2000
v	No. 211334 Wayne Circuit Court
MICHAEL M. HOLDER, Defendant-Appellant.	LC No. 97-005263

Before: Kelly, P.J., and Holbrook, Jr. and Griffin, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of unarmed robbery, MCL 750.530; MSA 28.798, and carjacking, MCL 750.529a; MSA 28.797(a), and sentenced, as a third habitual offender, MCL 769.11; MSA 28.1083, to five to ten years in prison for the unarmed robbery conviction and ten to twenty years for the carjacking conviction. He appeals as of right. We affirm defendant's convictions, but remand for correction of the judgment of sentence.

The elderly victim in this case was carjacked, assaulted and robbed. Twice within the days following the incident, the perpetrator went to the victim's home trying to sell lawnmowers and bicycles. The victim's family took down the license plate number of the perpetrator's van, called the police with a description, and defendant was arrested shortly thereafter.

Defendant first contends he was denied a fair and impartial trial because the prosecutor made improper comments during closing arguments. We disagree.

Defendant failed to object to the prosecutor's comments during closing argument, and, consequently, this issue is not properly preserved for review. *People v Slocum*, 213 Mich App 239, 241; 539 NW2d 572 (1995). In order to avoid forfeiture of this issue, defendant must demonstrate plain error that was prejudicial, i.e., that could have affected the outcome of the trial. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999); *People v Grant*, 445 Mich 535, 553; 520 NW2d 123 (1994).

Defendant claims the prosecutor injected facts not in evidence into her final argument by stating that the victim "got the description pretty much on the money" and "at two prior hearings under oath identified [defendant] and his description was pretty much right on the money." A prosecutor may argue a witness' credibility from evidence presented at trial, but is prohibited from suggesting to the jury "that the government has some special knowledge that the witness is testifying truthfully." *People v Howard*, 226 Mich App 528, 548; 575 NW2d 16 (1997). Further, a prosecutor may not argue facts not introduced into evidence. *People v Stanaway*, 446 Mich 643, 686; 521 NW2d 557 (1994).

The victim identified defendant at the preliminary examination and at defendant's first trial. During examination of the victim, the prosecutor solicited testimony that the victim had previously identified defendant and that "he looked about the same as he looked when he carjacked [him]." The prosecutor's remarks during closing argument were based on the testimony and evidence presented, and were made in direct response to defense counsel's argument that the victim's identification testimony was not reliable. The prosecutor could use that evidence during closing arguments and all reasonable inferences therefrom. *People v Lee*, 212 Mich App 228, 255; 537 NW2d 233 (1995).

The prosecutor also commented that the victim's descriptions perfectly matched defendant without introducing those descriptions. We find that the prosecutor's comments did not rise to such a level that it denied defendant a fair trial. *People v Paquette*, 214 Mich App 336, 342; 543 NW2d 342 (1995). The victim repeatedly indicated that he was certain it was defendant who robbed him, the description he gave to police was presented to the jury, and the court instructed the jury that the attorneys' closing arguments should not be considered evidence and that they should only consider testimony and exhibits admitted during trial. Defendant was not denied a fair trial because of the prosecutor's remarks.

Next, defendant argues that the prosecutor improperly vouched for the credibility of the victim by stating that "somebody was lying" and that, unless the victim and his daughter were "Carnack the Magician" and had a vision of what defendant was driving, they got the license number correct and defendant was lying. No witness testified that the license plate number given to police was the same as on defendant's van, although the prosecution stated that the plate was on the van defendant was driving on the day he was arrested. Defense witness had testified that the van had not been working for six months. A prosecutor is permitted to "argue from the facts that a witness is not worthy of belief." *People v Avant*, 235 Mich App 499, 512; 597 NW2d 864 (1999). However, as noted above, the prosecutor may not argue facts that were not introduced into evidence. *Stanaway, supra*, 446 Mich 686.

Since defendant did not raise a timely objection, he must demonstrate plain error that was prejudicial. *Carines, supra*. No witness testified that the license number called in by the victim's daughter matched the plate on the van defendant was driving when he was arrested. Several witnesses testified that defendant's van was at the victim's house. This testimony contradicted defendant's alibi that the van was not running. Given these facts, we cannot say that the prosecutor's remarks were so prejudicial as to deny defendant a fair trial.

Defendant argues it was improper for the prosecutor to misinform the jury about scientific principles that were not presented in evidence, specifically psychological principles of eyewitness identification. Defendant did not object to the prosecutor's statements and, again, this issue is forfeited unless he shows plaintiff error that resulted in prejudice. *Carines*, *supra*. No expert testified regarding the scientific reliability of eyewitness identifications. However, the term "mistaken identity" is a common sense phrase used to illustrate the prosecution's theory that the victim's identification of defendant on multiple occasions was significant. The prosecutor did not inject commentary about data or psychological theories that would have confused the jury or caused it to give this argument undue weight. Rather, taken in context, it appears that the prosecutor used a commonplace example -- running into someone at the mall and mistaking them for an old classmate -- to emphasize the testimony she found important. A prosecutor is permitted to comment on and argue from evidence introduced at trial and, since there was ample testimony regarding the victim's identification of defendant, there was nothing improper about these remarks. *People v Nimeth*, 236 Mich App 616, 627; 601 NW2d 393 (1999). The trial court's cautionary instruction regarding closing arguments and the prosecutor's summation read as a whole do not reveal plain error that resulted in a miscarriage of justice.

Finally, defendant argues that his judgment of sentence does not reflect the sentence imposed by the court and must be corrected. We agree.

The judgment of sentence indicates that the sentences were vacated and enhanced pursuant to MCL 769.13; MSA 28.1085. The judgment of sentence, however, does not accurately reflect the five- to fifteen-year sentence imposed by the court for the robbery conviction. Accordingly, we remand for the limited purpose of correcting the judgment of sentence. *People v Avant*, 235 Mich App 499, 520; 597 NW2d 864 (1999). We do not retain jurisdiction.

Affirmed, but remanded for correction of the judgment of sentence.

/s/ Michael J. Kelly
/s/ Donald E. Holbrook, Jr.
/s/ Richard Allen Griffin