

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRIAN SHELDON VAUGHN,

Defendant-Appellant.

UNPUBLISHED
October 20, 2000

No. 210172
Genesee Circuit Court
LC No. 96-053939-FC

Before: O'Connell, P.J., and Kelly and Whitbeck, JJ.

PER CURIAM.

Defendant was convicted by a jury of one count of armed robbery, MCL 750.529; MSA 28.797, two counts of assault with intent to murder, MCL 750.83; MSA 28.278, two counts of assault with intent to rob while armed, MCL 750.89; MSA 28.284, and three counts of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced as a third habitual offender, MCL 769.11; MSA 28.1083, to five terms of life imprisonment for the assault and robbery convictions, to be served consecutive to three concurrent two-year terms for the felony-firearm convictions. He appeals as of right. We affirm.

Defendant contends that the prosecutor improperly referred to an accomplice's plea agreement to bolster that witness' trial testimony. Because defendant did not object to the challenged conduct at trial, he is not entitled to appellate relief unless he can show plain error that affected his substantial rights. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999). Essentially, this standard requires defendant to show significant prejudice before we may reverse his conviction. *Id.* at 763.

Defendant has not shown that he was prejudiced by the admission of details of the witness' plea agreement, inasmuch as evidence of a plea agreement could be used to impeach the witness' credibility. *People v Dowdy*, 211 Mich App 562, 571; 536 NW2d 794 (1995); *People v Mumford*, 183 Mich App 149, 152; 455 NW2d 51 (1990). Further, the prosecutor did not engage in misconduct by eliciting testimony and arguing that the plea agreement required the witness to testify truthfully where the prosecutor did not personally vouch for the witness' credibility or suggest that he had some special knowledge of the witness' truthfulness. *People v Bahoda*, 448 Mich 261, 275-279; 531 NW2d 659 (1995); see also *People v Turner*, 213 Mich App 558, 584-585; 540 NW2d 728 (1995).

Defendant also argues that the admission of evidence that he engaged in shoplifting activities shortly before the charged crimes were committed denied him a fair trial. Defendant failed to object to the admission of this evidence at trial and he has failed to demonstrate that the admission of this evidence amounted to plain error. *Carines, supra* at 761-767. Rather, the evidence was admissible as part of the res gestae of the crime, without regard to MRE 404(b). *People v Sholl*, 453 Mich 730, 740-742; 556 NW2d 851 (1996); *People v Coleman*, 210 Mich App 1, 5; 532 NW2d 885 (1995).

Defendant also failed to object to the admission of Sheldon March's testimony, the admissibility of which he now challenges on appeal. We likewise conclude that no plain error is apparent from the admission of this testimony. A review of March's testimony discloses that this case is more analogous to *People v Kilbourn*, 454

Mich 677, 682-684; 563 NW2d 669 (1997), than *People v Stanaway*, 446 Mich 643, 693; 521 NW2d 557 (1994). The record does not indicate that the prosecutor improperly called March as a witness solely to impeach his credibility with the letters he wrote another witness and with his prior police statement, or that the prosecutor intended to use that evidence for substantive purposes.

Next, we reject defendant's claim that the court erred in giving CJI2d 5.5 (involving the testimony of a disputed accomplice), rather than CJI2d 5.4 (for an undisputed accomplice), where there were discrepancies over the exact roles that the accomplices played in the charged crimes and CJI2d 5.5 was specifically requested by the defense. *People v Ho*, 231 Mich App 178, 188; 585 NW2d 357 (1998).

Finally, defendant has failed to show that he was denied the effective assistance of counsel based on counsel's failure to object to the foregoing matters. *People v Pickens*, 446 Mich 298, 338; 521 NW2d 797 (1994).

Affirmed.

/s/ Peter D. O'Connell
/s/ Michael J. Kelly
/s/ William C. Whitbeck