

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JUWAUN LONG,

Defendant-Appellant.

UNPUBLISHED

January 5, 2001

No. 216364

Wayne Circuit Court

LC No. 98-000088

Before: Doctoroff, P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction for carrying a concealed weapon, MCL 750.227; MSA 28.424. Defendant was sentenced to one year of probation. We affirm.

Defendant first contends that the prosecutor elicited inadmissible hearsay and opinion testimony from the police officer in charge, Robbin Farrar, and the trial court improperly considered the prejudicial evidence. We disagree. Defendant did not properly preserve these issues below by specifically objecting to the alleged statements and stating the same basis on appeal.¹ See MRE 103(a)(1). “It is well established that objections to admissibility not properly raised at trial cannot be later asserted on appeal.” *People v Kilbourn*, 454 Mich 677, 685; 563 NW2d 669 (1997). Accordingly, this Court will only review the issue to the extent that failure to do so would result in manifest injustice. *People v Griffin*, 235 Mich App 27, 44; 597 NW2d 176 (1999). We find no manifest injustice in this instance.

The purpose of Officer Farrar’s examination was to determine whether she satisfied the due diligence requirement in investigating the identity of two officers defendant and his brother alleged were the first to respond to the crime scene. The testimony was elicited to explain why Officer Farrar did not engage in additional investigative efforts. Officer Farrar testified that she conducted no further investigation because she thought the case would end with a plea and

¹ Defendant raised one relevancy objection during the disputed testimony which was sustained by the trial judge who held that any reference to plea negotiations was irrelevant information that she would not consider in deciding the case.

because it was a “straight CCW” case. Officer Farrar also recounted a conversation she had with defendant’s mother who “was basically trying to ascertain from me what should she do in terms of him pleading and getting some kind of a deal so he wouldn’t get a criminal record.” Officer Farrar further testified that, as a result of the conversation with defendant’s mother, she “was given the impression that the other brother had admitted to them having the weapon.” These statements were not offered to prove the truth of the matter asserted or to state a legal conclusion. Officer Farrar’s statements simply explained the rationale for her decision not to engage in further attempts to identify two alleged res gestae witnesses. Accordingly, there was no error in their admission.

Defendant next contends that the trial court’s findings of fact were not supported by the evidence of record and thus were inadequate to support defendant’s conviction. We disagree. In waiver cases, the trial court is charged with the duties to find the facts specially, state its conclusions of law, and direct entry of the judgment. MCR 6.403. The purpose of requiring specific factual findings is to allow appellate review by disclosing the facts relied upon by the factfinder on each element of the applicable law. *People v Simon*, 189 Mich App 565, 568; 473 NW2d 785 (1991). Factual findings are sufficient as long as it is manifest that the court was aware of the factual issues and correctly applied the law. *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992).

The elements of the crime of carrying a concealed weapon, with regard to this case, are that the accused carried a pistol and that it was concealed on or about his person. See MCL 750.227; MSA 28.424; *People v Davenport*, 89 Mich App 678, 682; 282 NW2d 179 (1979). In rendering her findings of fact, the trial judge found that defendant had a pistol that he carried in his coat pocket until the police arrived on the scene and he dropped it to his side. The trial judge further found that defendant could take the gun from his pocket and drop it, consistent with the arresting police officer’s testimony, although defendant had open reduction surgery to repair a fractured finger fifteen days before his arrest and was wearing a short arm cast.

The issue on appeal concerns the trial judge’s finding, which supported defendant’s alleged ability to remove the gun from his pocket and drop it, that “[t]he defendant testified that the cast could be removed and that he didn’t have to wear the cast all the time.” In fact, defendant did not testify to those facts. However, the trial court did not solely rely on those incorrect facts in reaching her guilty verdict. Instead, the trial judge indicated that she relied upon the “medical evidence,” i.e. the orthopedic surgeon’s note describing the nature of the injury and subsequent medical intervention. The trial judge further indicated that her decision was based on her assessment of the credibility of the arresting police officers with regard to the events that transpired leading to defendant’s arrest. This Court gives great deference to the trial court’s assessment of the credibility of witnesses. *People v Brannon*, 194 Mich App 121, 131; 486 NW2d 83 (1992). In this case, the trial court’s findings were sufficient because it is apparent from the record that the court was aware of the factual issues, correctly applied the law, and explicitly found the elements of the charged offense proved beyond a reasonable doubt. *Legg, supra*.

Defendant next contends that the prosecutor did not provide reasonable assistance in the effort to identify two alleged res gestae witnesses. We disagree. We review the trial court’s

determination of due diligence for an abuse of discretion. *People v Lawton*, 196 Mich App 341, 348; 492 NW2d 810 (1992). The prosecutor has a duty to provide reasonable assistance to locate witnesses on a defendant's request. See *People v Burwick*, 450 Mich 281, 289; 537 NW2d 813 (1995). There is no requirement to exercise due diligence to discover the names of witnesses. *People v Gadomski*, 232 Mich App 24, 36; 592 NW2d 75 (1998).

In the instant case defense counsel issued a request to the prosecution to identify one African-American officer and one Caucasian officer, both wearing plain clothes with their identifications around their necks, driving a burgundy Crown Victoria on the night in question. The request further indicated that the officers were "possibly narcotic officers." It was alleged that these two officers detained defendant and his brother prior to the arrival of the arresting officers.

In response to defendant's request, Officer Farrar retrieved the duty and vehicle logs for the night in question and attempted to ascertain the identity of the officers. She identified four officers who matched the description and submitted those names to defense counsel. Defense counsel interviewed the officers and declared that they were not the officers in question. However, contrary to defendant's request to the prosecutor, defendant and his brother both testified that the alleged first officers on the scene were driving a white vehicle. This inconsistency undermines the credibility of defendant and his brother. Further, this is not a situation where both parties agree that an unknown *res gestae* witness exists. See, e.g., *Gadomski, supra*. The arresting officer testified that he did not remember any police officers at the scene prior to his arrival and Officer Farrar testified that, as a result of her investigation, she determined that no other officers were at the crime scene. The trial court's finding that the prosecution provided reasonable assistance under the circumstances in identifying the alleged witnesses was not an abuse of discretion. *Lawton, supra*.

Finally, defendant argues that the prosecutor made several statements during her closing argument that constituted prosecutorial misconduct and denied defendant a fair trial. We review issues of prosecutorial misconduct to determine whether defendant was denied a fair and impartial trial. *People v Paquette*, 214 Mich App 336, 342; 543 NW2d 342 (1995).

During the prosecutor's closing argument she made an unsupported statement regarding defendant's ability to use his hand to sign his rights form. Defense counsel objected to the statement. The prosecutor attempted to proceed, but the trial judge interrupted her and stated that the prosecutor needed to address the objection. We hold that the trial judge implicitly sustained defense counsel's objection. Accordingly, the prosecutor's statement was harmless and did not deny defendant a fair trial. *Paquette, supra* at 342.

Defendant also contends that the prosecutor improperly referred to inadmissible evidence in her initial closing argument by mentioning the telephone conversation Officer Farrar testified she had with defendant's mother. Defense counsel objected to the statement during the prosecutor's rebuttal argument. The trial judge sustained defense counsel's belated objection, holding that there was no record evidence of the substance of the alleged telephone conversation. The result of an objection for an improper remark by a prosecutor is the issuance of a curative instruction. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). In the instant case, where the trial judge was the trier of fact, such a curative instruction was unnecessary because the

trial judge recognized and agreed that the prosecutor's argument was improper. Accordingly, we hold that defendant was not denied a fair trial. *Paquette, supra* at 342.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Mark J. Cavanagh

/s/ Patrick M. Meter