

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICKY LEE BROYLES,

Defendant-Appellant.

UNPUBLISHED

April 24 2001

No. 223521

Van Buren Circuit Court

LC No. 99-011279-FC

Before: Hoekstra, P.J., and Whitbeck and Cooper, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of voluntary manslaughter, MCL 750.321; MSA 28.553. He was sentenced as a third habitual offender, MCL 769.11; MSA 28.1083, to nine to thirty years' imprisonment. Defendant appeals as of right. We affirm.

Defendant first contends that the trial court erred in refusing to reinstruct the jury on the elements of voluntary manslaughter after the jury expressed confusion as to the scope of self-defense. We disagree. Because defense counsel failed to object at trial, we review this issue for plain error that affects defendant's substantial rights. *People v Snider*, 239 Mich App 393, 420; 608 NW2d 502 (2000).

The jury never requested any additional instruction on the elements of voluntary manslaughter. Nor did the jury express confusion regarding that offense. Absent a request by the jury, it is not error to fail to reiterate the previous instructions concerning the charges involved. *People v McWhorter*, 150 Mich App 826, 833; 389 NW2d 499 (1986). Likewise, it is not error for a trial court to fail to reinstruct a jury on the elements of voluntary manslaughter, when the trial court's initial instructions were clear and the jury did not express confusion regarding the offense. *People v Paquette*, 214 Mich App 336, 340; 543 Nw2d 342 (1995).

Although the jury did express some difficulty with regard to the scope of self-defense, the trial court's decision to refer the jury back to the written instructions it had previously provided was not error. Additional oral instruction was unnecessary because the jury had written instructions explaining self-defense.

Defendant next argues that prosecutorial misconduct denied him a fair trial. We disagree. Specifically, defendant challenges the prosecutor's cross examination of defendant regarding his previous conviction for attempted breaking and entering of a church.

Appellate review of a prosecutor's allegedly improper remarks is precluded absent a timely and specific objection at trial, unless a curative instruction could not have eliminated the prejudice or a failure to review the issue would result in a miscarriage of justice. *People v Kelly*, 231 Mich App 627, 638; 588 NW2d 480 (1998). Because defense counsel failed to object to the prosecutor's remark, we review this unpreserved issue for plain error. *People v Schutte*, 240 Mich App 713, 720; 613 NW2d 370 (2000).

Prior felony convictions involving theft are admissible for the purpose of impeaching the credibility of a witness. MRE 609. Moreover, prosecutorial misconduct issues are decided on a case by case basis, with the reviewing court examining the record and evaluating the prosecutor's remark in context. *Schutte, supra* at 721. In this case, defense counsel raised the issue of defendant's conviction for attempted breaking and entering in his direct examination of defendant. Looking at the prosecutor's remarks in context, we find that the prosecutor attempted to impeach defendant with the completed charge (attempted breaking and entering "with an intent to steal"). Furthermore, any prejudicial effect of the remark could have been cured by a cautionary instruction.

Affirmed.

/s/ Joel P. Hoekstra
/s/ William C. Whitbeck
/s/ Jessica R. Cooper