

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL ROBERT SMITH,

Defendant-Appellant.

UNPUBLISHED
November 9, 2001

No. 231975
Oakland Circuit Court
LC No. 2000-173657-FC

Before: Doctoroff, P.J., and Wilder and Schmucker*, JJ.

PER CURIAM.

Defendant appeals as of right his jury conviction of armed robbery, MCL 750.529.¹ The trial court sentenced defendant to eighteen to forty years' imprisonment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant approached the clerk at a gas station at about 12:50 a.m. He asked for a pack of Basic cigarettes and gave the clerk a five dollar bill. As the clerk handed defendant his change, he lifted his shirt and showed her a gun that was in the waistband of his pants. Defendant told the clerk to open the register and give him all the money. She could see the handle of the gun sticking out above the waist of his pants and saw a bulge in his pants that was in the form of a gun. The clerk believed that defendant would shoot her if she did not comply with her request. She gave defendant all the money in the register, including a \$10 roll of quarters. The total amount of money given to defendant out of the drawer was \$152.14. Defendant took the money and put it into his pants pocket.

The clerk ducked down behind the counter as defendant left, then saw a white Pontiac leave the gas station. She alerted police. Defendant was pursued from the gas station, at I-96 and Kent Lake Road, and stopped by police on eastbound I-696 as Halstead Road. After initially

¹ Defendant pleaded guilty to fleeing and eluding, third degree, MCL 750.479a, and failing to stop at the scene of a personal injury accident, MCL 257.617a. All the charges arose out of the same incident. The court sentenced defendant to six to twenty years' for fleeing and eluding and 169 days' for the failure to stop at the accident. However, this appeal does not involve the guilty plea convictions.

* Circuit judge, sitting on the Court of Appeals by assignment.

getting out of his car as directed by police, defendant then got back in and sped off. He got off of I-696 at Orchard Lake Road, where he hit a patrol car and injured an officer. Defendant continued to speed away, driving southbound on Orchard Lake Road. He then drove eastbound on Grand River into Detroit. He stopped in a residential neighborhood, still pursued by police, and fled on foot. A police officer caught up to defendant and tackled and handcuffed him.

The police found a wad of bills in defendant's pocket, totaling \$141. They found a crack pipe and pack of Basic cigarettes in his underwear and a broken \$10 roll of quarters and an unopened pack of Basic cigarettes in his car. The clerk identified defendant immediately during a live line-up.

Defendant filed a pre-trial motion to exclude the admission of his prior criminal convictions for impeachment purposes. These convictions included convictions for attempted armed robbery and unarmed robbery. He argued that the admission of this evidence for impeachment purposes would be more prejudicial than probative and would have a chilling effect on his testimony. The trial court denied defendant's motion, ruling that the evidence was admissible.

Defendant challenges the trial court's denial of his motion to exclude the evidence of his prior convictions. Because defendant neither testified at trial nor expressed an intent to testify, he has waived this issue. *People v Finley*, 431 Mich 506, 526; 431 NW2d 19 (1988).

Next, defendant argues that the prosecutor engaged in misconduct when, over defendant's sustained objection, he made reference to the gun held by the deputy in the courtroom. In reviewing a claim of prosecutorial misconduct, this Court considers the pertinent portion of the record to evaluate the prosecutor's conduct in context and determine whether the defendant was denied a fair and impartial trial. *People v Rice (On Remand)*, 235 Mich App 429, 435; 597 NW2d 843 (1999). We find that the prosecutor's references to the deputy's gun did not deny defendant a fair and impartial trial.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Kurtis T. Wilder
/s/ Chad C. Schmucker