

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JASON ROBERT WRIGHT,

Defendant-Appellant.

UNPUBLISHED

May 10, 2002

No. 230067

Genesee Circuit Court

LC No. 99-004072-FC

Before: Bandstra, P.J., and Smolenski and Meter, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted from his conviction by a jury of carjacking, MCL 750.529a, felonious assault, MCL 750.82(1), and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced him to 72 to 180 months' imprisonment for the carjacking conviction, to be served concurrently with a twelve-to-forty-eight-month term for the felonious assault conviction and consecutively to a two-year term for the felony-firearm conviction. We affirm.

Defendant first argues that the trial court erred by overruling defendant's objection to the testimony of a police officer, Sharon Dunbar, regarding the lack of fingerprint evidence. Defendant contends that the testimony amounted to improper expert testimony given without a sufficient foundation. We disagree.

We review a trial court's decision to admit or exclude evidence for an abuse of discretion. *People v Taylor*, 195 Mich App 57, 60; 489 NW2d 99 (1992). This Court finds an abuse of discretion only if an unprejudiced person, considering the facts on which the trial court acted, would find no justification for the ruling made. *Id.*

MRE 702 states:

If the court determines that recognized scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Here, considering the context, it is apparent that Dunbar's testimony did not involve any scientific, technical, or other specialized information that required her to be qualified as an expert. She merely testified about her own experience with fingerprint evidence from automobiles. Because there is no indication that the witness was testifying as an expert, she was not required to be qualified as such. Accordingly, no violation of MRE 702 occurred, and the trial court did not abuse its discretion in allowing the testimony. Even if the trial court *had* erred by admitting the testimony, we would nonetheless find no basis for reversal because, in light of the other evidence offered at the trial, the testimony did not likely affect the outcome of the case. See *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999).

Next, defendant argues that the trial court erred by overruling his objection to Dunbar's testimony in which she indicated that it was not uncommon for a suspect to give several versions of an incident before finally telling her what they represent as the truth. Defendant contends that this testimony constituted impermissible vouching for the credibility of defendant's accomplice, who testified against defendant and had given different versions of the incident that resulted in the convictions. See *People v Williams*, 153 Mich App 582, 590; 396 NW2d 805 (1986). We disagree.

Although Dunbar testified that it was not uncommon for a suspect to give different versions of an incident during questioning, she did not provide an opinion concerning which version was credible. Accordingly, no error occurred. Moreover, the questioning that elicited Dunbar's testimony occurred in response to defense counsel's questioning of the accomplice, during which counsel asked the accomplice about his various statements in an apparent attempt to challenge his credibility. As such, the challenged testimony occurred in response to an action taken by the defense and was not improper. See generally *People v Schutte*, 240 Mich App 713, 721; 613 NW2d 370 (2000).

Finally, defendant argues that his trial counsel provided ineffective assistance by failing to object to testimony elicited from defendant's mother that defendant had been expelled from school for missing too many days. Defendant contends that the testimony amounted to improper character evidence under MRE 404(b). To establish ineffective assistance of counsel, a defendant must demonstrate that his attorney performed deficiently and that the deficiency likely affected the outcome of the case. See *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 889 (2001). A defendant must overcome a strong presumption of effectiveness. *Id.* Defendant has not borne his burden here. Indeed, the prosecutor's closing arguments showed that the challenged testimony was elicited not to "prove the character of [defendant] in order to show action in conformity therewith," see MRE 404(b), but rather to challenge the credibility of defendant's mother by establishing that she did not ensure her son's attendance at school. Even if the challenged testimony had been improper, defendant would nonetheless not be entitled to appellate relief, because, in light of the other evidence offered at trial, there is no reasonable probability that the testimony affected the outcome of the case. *Carbin*, *supra* at 600.

Affirmed.

/s/ Richard A. Bandstra
/s/ Michael R. Smolenski
/s/ Patrick M. Meter