STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GEOFFREY ALEXANDER MOORE,

Defendant-Appellant.

UNPUBLISHED
September 17, 2002

No. 231224
Branch Circuit Court
LC No. 99-106914-FH

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

PER CURIAM.

Following a jury trial, defendant was convicted of extortion, MCL 750.213 and sentenced to 84 to 160 months' imprisonment. He appeals as of right. We affirm.

I

While an inmate at the Lakeland Correctional Facility in Coldwater and purported head of the Cobra gang, defendant allegedly coerced a fellow inmate's participation in gang activities and, specifically, in punishing another inmate as retaliation for derogatory remarks he made about defendant. When the fellow inmate failed to complete the task, defendant imposed a "violation" on him, requiring him to pay defendant $100. The fellow inmate, and extortion victim in this case, had his girlfriend send the money to two designated inmates in installments of $50 each. However, because of a delay in receiving the second installment, defendant informed the victim that he must pay an additional $30, at which point the victim informed correction officials of defendant's activities, resulting in a charge and conviction of extortion.

II

Defendant first claims error in the admission of testimony from the victim that threats were made against him for coming forward in this case. Defendant argues that the court abused its discretion in admitting this testimony as evidence of defendant's knowledge of guilt or attempt to influence a witness because the threats were not linked to defendant. Further, this testimony was "highly inflammatory and prejudicial," which denied defendant his due process right to a fair trial. We disagree.

The decision whether to admit evidence is within the discretion of the trial court and will not be disturbed on appeal absent a clear abuse of discretion. *People v Snider*, 239 Mich App

393, 419; 608 NW2d 502 (2000). An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say that there was no justification or excuse for the ruling. *Id.*

On direct examination, the prosecutor asked the victim witness whether he had received any threats as a result of "coming forward." The victim stated that he had, and the prosecutor asked whether defendant had made threats. The victim responded, "Not personally," and the prosecutor then asked whether the victim had received threats from anyone else. Defense counsel objected to this line of questioning.

Following an offer of proof, the court ruled that the testimony of threats from another gang member was admissible "as evidence of knowledge, of guilt, of attempting to influence the testimony of the primary witness," but that the details of the threats, the actual statements, were inadmissible hearsay. The victim then testified that he received threats from another inmate, who was a member of the Cobra gang.

We find no abuse of discretion in the admission of this limited testimony. The crime of extortion is predicated on the existence of a threat of immediate, continuing, or future harm. *People v Hubbard (After Remand)*, 217 Mich App 459, 484-485; 552 NW2d 493 (1997). Further, "[e]vidence of a defendant's threat against a witness is generally admissible as conduct that can demonstrate consciousness of guilt." *People v Kelly*, 231 Mich App 627, 640; 588 NW2d 480 (1998). In the latter regard, no error was found where the prosecutor questioned a witness whether he was afraid of testifying in court, and the defendant argued that he was therefore unfairly prejudiced by an insinuation that he was either dangerous or had threatened a witness. *Id.* In either regard, the testimony was relevant to the ultimate issue whether defendant was guilty of the charged crime of extortion, i.e., whether defendant had made threats against the victim. MRE 401. Further, the testimony was relevant to the issue of the alleged connection between the threats and the purported gang hierarchy. We therefore reject defendant's argument that the testimony should have been excluded because its probative value was substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury. MRE 403.

In view of the trial court's limitation on the testimony, excluding the statements allegedly made, we likewise reject defendant's argument that the testimony was inadmissible hearsay. MRE 801. "Where a witness testifies that a statement was made, rather than about the truth of the statement itself, the testimony is not hearsay." *People v Harris*, 201 Mich App 147, 151; 505 NW2d 889 (1993).

III

Defendant next argues that rebuttal testimony on a collateral matter was error requiring reversal. We disagree.

The admission of rebuttal evidence is within the trial court's discretion. *People v Figgures*, 451 Mich 390, 398; 547 NW2d 673 (1996). We find no abuse of discretion in the trial court's determination that the limited rebuttal evidence was proper for impeachment purposes. *Id.* at 398-400.

At issue is the testimony of Officer Fitzgerald, called to rebut testimony of another inmate and former Cobra member at Lakeland who allegedly received a letter from defendant placing an "SOS," smash on sight, against the victim. Contrary to defendant's assertion, the prosecution did not elicit a denial "from its own witness" and use Fitzgerald's testimony to impeach the witness.

Before the inmate's testimony, the court excused the jury and received an offer of proof, following which the defense expressed its desire that the inmate testify, knowing that the prosecution would call Fitzgerald to impeach the inmate's testimony. Defendant has failed to show any undue prejudice from the fact that Fitzgerald testified as a rebuttal witness rather than in the prosecution's case in chief. Any error was harmless and one to which the defense contributed; and is therefore not error warranting reversal. MCL 769.26; *Figgures, supra* at 402; *People v Griffin*, 235 Mich App 27, 46; 597 NW2d 176 (1999).

Affirmed.

/s/ Michael R. Smolenski
/s/ Janet T. Neff
/s/ Richard A. Bandstra