STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 1, 2007
v	No. 266081 Wayne Circuit Court
EDWARD LEE ROWLAND, Defendant-Appellant.	LC No. 05-004588-01

Before: Hoekstra, P.J., and Markey and Wilder, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to rob while armed, MCL 750.89, and third-degree fleeing and eluding a police officer, MCL 257.602a(3).[1] He was sentenced as a habitual offender, third offense, MCL 769.11, to concurrent prison terms of 15 to 40 years for the assault conviction, and 3 to 10 years for the fleeing and eluding conviction. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. Underlying Facts

On April 23, 2005, 18-year-old Jeff Crespi and his girlfriend, Casse Sandusky, were sitting in Crespi's car in front of Sandusky's house when a car traveling in the opposite direction "slammed on the brakes," backed up, and parked near Crespi's car. Both Crespi and Sandusky testified that defendant approached Crespi's car. When Crespi rolled down his window, defendant said, "Give me your ******* money," and hit Crespi in the head with a metal lug wrench. Sandusky ran to call the police, leaving the passenger door open. Crespi crawled out of the passenger door as defendant attempted to hit him again. Defendant then chased Crespi around the car with the lug wrench. Crespi screamed out as he ran toward Sandusky's front door, and defendant returned to his car and sped away.

A police officer observed defendant's car pass him at a high rate of speed in an area where the speed limit was 35 miles an hour. Police officers, traveling at speeds up to 125 miles

[1] Defendant was also convicted of felonious assault, MCL 750.82, but that conviction was vacated on double jeopardy grounds.

an hour, were unable to catch the car over a four-mile chase. Officers subsequently saw that the car had crashed and was unoccupied. Shortly thereafter, a canine unit located defendant hiding in a dumpster. Officers determined that defendant matched a recent description for an attempted robbery suspect. In a statement made to the police, defendant denied robbing anyone, and stated that he fled from the police because he "had warrants." The police recovered a black metal lug wrench from the front seat of defendant's car. The parties stipulated that a cell phone found in Crespi's car belonged to the owner of the car defendant was driving. The person had loaned defendant both her car and cell phone.

At trial, defendant denied demanding money from Crespi, but admitted fleeing the police and hiding in a dumpster. Defendant claimed that he could not get by Crespi's car, and Crespi made a derogatory comment when he asked him to move. Defendant, who was intoxicated, got out of his car and brandished a lug wrench to intimidate Crespi, but Crespi protruded his head and defendant hit him. Defendant admitted that he did not mention the incident with Crespi when talking to the police about his whereabouts that evening.

II. Impeachment by Prior Conviction

Defendant first argues that the trial court abused its discretion by allowing the prosecutor to impeach his credibility with evidence of a 2003 conviction for second-degree home invasion, MCL 750.110a(3), under MRE 609(a)(2). We disagree.

This Court reviews a trial court's decision to allow impeachment by evidence of a prior conviction for an abuse of discretion. *People v Coleman*, 210 Mich App 1, 6; 532 NW2d 885 (1995).

A prior conviction may be used to impeach a witness's credibility if the conviction satisfies the criteria set forth in MRE 609. *People v Cross*, 202 Mich App 138, 146; 508 NW2d 144 (1993), lv den 445 Mich 912 (1994). Evidence of a prior conviction for an offense involving theft may be admitted for impeachment purposes under the balancing test in MRE 609. In determining the probative value of evidence of a prior conviction, the trial court must "consider only the age of the conviction and the degree to which of conviction of the crime is indicative of veracity." MRE 609(b). In determining the prejudicial effect, the trial court must consider only the conviction's similarity to the charged offense and whether admission of the evidence would affect defendant's decision whether to testify. *Id.*

The trial court determined that defendant's prior conviction for second-degree home invasion contained an element of theft. In discussing this matter, defense counsel agreed that second-degree home invasion contained an element of theft. The court then properly weighed the probative value against the prejudicial effect inherent in the admission of the conviction. The court found that the prior conviction was indicative of defendant's veracity. The court aptly noted that the charge of assault with intent to rob turned on the issue of credibility. Crespi testified that defendant attempted to rob him, while the defense argued that this was a case of "road rage" and defendant had no intent to rob Crespi. The trial court noted that the conviction was only two years old, which heightened its probative value. *Cross*, *supra* (a conviction had "heightened probative value because [it] was only two years old"). Further, there was no indication that admission of the prior conviction affected defendant's decisional process. The trial court noted that defendant had already decided to testify, and defense counsel acknowledged

that defendant would testify to present his defense. Additionally, the trial court provided a cautionary instruction to the jury regarding the proper use of the evidence. On balance, the trial court's decision to admit the prior conviction was not an abuse of discretion.

III. Jury Instructions

We reject defendant's claim that the trial court erred in instructing the jury on flight. "The determination whether a jury instruction is applicable to the facts of the case lies within the sound discretion of the trial court." *People v Ho*, 231 Mich App 178, 189; 585 NW2d 357 (1998).

"It is well established in Michigan law that evidence of flight is admissible" to support an inference of "consciousness of guilt." *Coleman*, *supra* at 4. The term "flight" has been applied to such actions as fleeing the scene of the crime, running from the police, and attempting to escape custody. *Id*. Here, after assaulting Crespi, defendant returned to his car and "sped off down the street." Defendant admitted that he thereafter attempted to escape the police, and was driving 45 miles over the speed limit. After defendant's car crashed, he fled the car and hid in a dumpster until he was discovered by the police. Contrary to defendant's assertion, his actions could properly be considered evidence of "flight." *Id*. Consequently, the trial court did not err by providing the instruction.

Defendant argues that the instruction was improper because it was "duplicative" of the fleeing and eluding instruction. Defendant has not provided any authority to support his argument that the trial court was prohibited from instructing the jury on both flight and fleeing and eluding. As the appellant, defendant is required to do more than merely announce his position and leave it to this Court to discover and rationalize the basis for his claims. See *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984). Furthermore, the two instructions are not duplicative. See CJI2d 4.4 and CJI2d 13.6c. Defendant is not entitled to appellate relief.

IV. Prosecutorial Misconduct

Defendant also argues that he is entitled to a new trial because the prosecutor impermissibly vouched for the police officers when he stated, "The cops are telling the truth." We disagree.

Because defendant failed to object to the prosecutor's remark, we review this claim for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 752-753, 763-764; 597 NW2d 130, reh den 461 Mich 1205 (1999). "No error requiring reversal will be found if the prejudicial effect of the prosecutor's conduct could have been cured by a timely instruction." *People v Schutte*, 240 Mich App 713, 721; 613 NW2d 370, lv den 463 Mich 927 (2000), abrogated in part on other grounds in *Crawford v Washington*, 541 US 36; 124 S Ct 1354; 158 L Ed 2d 177 (2004).

Although a prosecutor may not vouch for the credibility of witnesses by conveying that he has some special knowledge that the witnesses are testifying truthfully, *People v Knapp*, 244 Mich App 361, 382; 624 NW2d 227, lv den 465 Mich 934 (2001), the challenged remark did not suggest that the prosecutor had special knowledge that the police witnesses were credible.

Rather, the remark was part of a permissible argument concerning credibility based on the testimony produced at trial. The police testimony concerned defendant's acts of fleeing and eluding and hiding in a dumpster, and defendant's statement. Defendant's own testimony was consistent with the police testimony in this regard. The prosecutor discussed the evidence at length, and told the jurors that it is their job to decide the facts and urged them to evaluate the evidence. A prosecutor is free to argue from the facts that a witness is credible. *People v Fisher*, 220 Mich App 133, 156; 559 NW2d 318 (1996), lv den 456 Mich 874 (1997); *People v Launsburry*, 217 Mich App 358, 361; 551 NW2d 460 (1996), lv den 454 Mich 883 (1997). Additionally, the trial court instructed the jurors that they were the sole judges of the witnesses' credibility, and that the lawyers' comments are not evidence. The instructions were sufficient to dispel any possible prejudice. *People v Long*, 246 Mich App 582, 588; 633 NW2d 843 (2001), lv den 465 Mich 952 (2002). Consequently, this claim does not warrant reversal.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Jane E. Markey
/s/ Kurtis T. Wilder