

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

AARON LEON MITCHELL,

Defendant-Appellant.

UNPUBLISHED
December 6, 2007

No. 269141
Wayne Circuit Court
LC No. 05-010861-01

Before: White, P.J., and Saad and Murray, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of receiving or concealing stolen property over \$20,000, MCL 750.535(2)(a), two counts of conspiracy to commit larceny by false personation, MCL 750.157a and MCL 750.363, conspiracy to commit identity theft, MCL 750.157a and MCL 445.65, and two counts of possession of stolen or counterfeit insurance certificates, MCL 257.329(1). He was sentenced as an habitual offender, third offense, MCL 769.11, to concurrent prison terms of 34 months to 20 years for the receiving or concealing and larceny convictions, and 17 months to 10 years for the remaining convictions. He appeals as of right, and we affirm.

Defendant first argues that his constitutional right of confrontation was violated when he was not allowed to cross-examine a police witness regarding the contents of statements that defendant had made to him.

Pursuant to MRE 103(a)(2), a party may not predicate a claim of evidentiary error on the exclusion of evidence unless the party's substantial rights were affected and "the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked." In this case, the substance of the evidence sought to be elicited was not made known to the court by offer of proof and is not apparent from the context of the question asked. Cf. *People v Snyder*, 462 Mich 38, 42-43; 609 NW2d 831 (2000). Because the issue is unpreserved, our review is limited to plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-767; 597 NW2d 130 (1999).

Defendant has not established that the trial court's ruling affected his substantial rights. Because he made no offer of proof, and the record does not indicate the substance of the evidence he sought to admit, there is no basis for concluding that exclusion of the evidence affected defendant's substantial rights. See *People v Hampton*, 237 Mich App 143, 154; 603

NW2d 270 (1999). Defendant has provided no foundation for a conclusion that the verdict would have been different had the questioning been permitted. We must therefore reject this challenge.

Defendant next asserts that that his due process rights were violated by the court's admission of evidence of his 1994 armed robbery convictions without engaging in the balancing required by MRE 609(b). We disagree. The prosecutor moved in limine to admit evidence of the convictions, noting that defendant had been discharged within the preceding ten years, as required by the rule. Defense counsel objected, asserting that their admission would be more prejudicial than probative. The court responded: "It's crime involving theft, dishonesty, false statement. The 403 balancing analysis, the court does not find they're unduly prejudicial under MRE 403." While defendant correctly observes that the court appeared to lump theft offenses together with crimes of dishonesty and false statement, notwithstanding that they are treated differently under MRE 609, it is also clear from the court's statement that it understood that because a theft crime was involved, it was required to weigh the probative value against the prejudicial effect. Although a more complete exposition of the MRE 609(b) factors is preferred, we find no error where it is clear that the court was aware of the pertinent factors and its discretion. *People v Meshell*, 265 Mich App 616, 638; 696 NW2d 754 (2005). Further, we find no abuse of discretion; the armed robbery conviction was marginally probative on the issue of credibility, and while old, was not similar to the crimes for which defendant was being tried. Further, defendant testified and dealt with the issue well. We find no basis for reversal.

Defendant next asserts that his constitutional rights to compulsory process and to present a defense were violated when the trial court intimidated a potential witness by repeatedly giving her inaccurate warnings that charges against her dismissed as part of a plea agreement could be reinstated, and she could be found in violation of her probation, based upon her testimony. We conclude that defendant waived this issue. Although the court engaged in an extensive colloquy with the witness, appointed counsel for her, and repeatedly informed her that charges could be reinstated, defense counsel announced to the court that the defense would rest without calling the witness, and the witness was never required to make a decision whether to testify. Under these circumstances, defendant cannot show that the court's actions caused the witness not to testify.

Affirmed.

/s/ Helene N. White
/s/ Henry William Saad
/s/ Christopher M. Murray