

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALFONZO QUELL BUCHANAN,

Defendant-Appellant.

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UNPUBLISHED

March 13, 2008

No. 275660

Kent Circuit Court

LC No. 04-012158-FH

Before: Fitzgerald, P.J., and Smolenski and Beckering, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of unarmed robbery, MCL 750.530. The trial court sentenced defendant to 2 to 15 years in prison. We affirm.

Defendant first argues that the trial court abused its discretion when it excluded his expert on eyewitness identifications. We disagree.

This Court reviews a trial court's decision to exclude an expert for an abuse of discretion. *People v Dobek*, 274 Mich App 58, 93; 732 NW2d 546 (2007). A trial court abuses its discretion when it selects an outcome that is not within the range of reasonable and principled outcomes. *People v Young*, 276 Mich App 446, 448; 740 NW2d 347 (2007). "An error in the admission or exclusion of evidence will not warrant reversal unless refusal to do so appears inconsistent with substantial justice or affects a substantial right of the opposing party." *Dobek, supra* at 93.

The starting point for the admissibility of all expert testimony is MRE 702, which provides:

If the court determines that 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 if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Under MRE 702, the trial court has an obligation “to ensure that any expert testimony admitted at trial is reliable.” *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 780; 685 NW2d 391 (2004).

MRE 702 mandates a searching inquiry, not just of the data underlying expert testimony, but also of the manner in which the expert interprets and extrapolates from those data. Thus, it is insufficient for the proponent of expert opinion merely to show that the opinion rests on data viewed as legitimate in the context of a particular area of expertise (such as medicine). The proponent must also show that any opinion based on those data expresses conclusions reached through reliable principles and methodology. [*Id.* at 782.]

Moreover, “[e]xpert testimony may be excluded when it is based on assumptions that do not comport with the established facts or when it is derived from unreliable and untrustworthy scientific data.” *Dobek, supra* at 94.

In this case, the trial court conducted a hearing to determine whether defendant’s expert could testify. The trial court found that the body of scientific knowledge was not disputed. Moreover, the trial court recognized that expert identification testimony might be helpful in a case of cross-racial identification. However, the trial court was “not convinced that there’s any scientific principle that has been established by competent studies that have been either published or even referenced to make a scientific approach of this helpful to the jury to understand or determine the question of identity here.” The trial court also noted some factual omissions or misapprehensions in the expert’s report. The trial court indicated that, if the expert did not have some of the underlying facts of the case, the reliability of his testimony would be undermined. Ultimately, the trial court determined that the expert should not testify:

[N]umber one, the bases upon which he assumed facts which were not comprehensive or reflected by the testimony here, combined with the lack of specificity with regard to published studies and the failure to suggest that either the physical or photographic line-up are in any way suggestive in this particular case, lead me to believe the threshold hasn’t been met under [MRE] 702, and the motion is respectfully denied.

We conclude that the trial court did not abuse its discretion in excluding the expert testimony. The trial court determined that the expert’s testimony was unreliable given certain omissions and misapprehensions of the underlying facts in this case. Further, the trial court found that the scientific data underlying the expert’s opinion on cross-racial identification were unreliable. Expert identification testimony on cross-racial identification may have been helpful in this case, but there was very little information on that subject contained in the report produced by defendant’s expert or adduced during voir dire. In the report, there was a brief reference that “other-race identification (e.g., White person observing another race person) is known to be poorer on average than same-race identification.” But there was nothing else in the report regarding this topic or any evidence adduced during the hearing that would establish the scientific validity of the studies that found problems with cross-racial identification. In addition, although defendant’s expert listed several publication credits on his curriculum vitae, none of those titles reference cross-racial identification or anything related to that topic. Without more

information on the evidentiary reliability or trustworthiness of the topic, we cannot conclude that the trial court abused its discretion in excluding this testimony. *Young, supra* at 448.

Defendant also argues that the trial court abused its discretion by denying his motion for mistrial based on the erroneous admission of prejudicial evidence. We disagree.

A trial court's ruling on a motion for mistrial is reviewed for an abuse of discretion. *People v Dennis*, 464 Mich 567, 572; 628 NW2d 502 (2001). "A mistrial should be granted only for an irregularity that is prejudicial to the rights of the defendant and impairs his ability to get a fair trial." *People v Haywood*, 209 Mich App 217, 228; 530 NW2d 497 (1995) (citations omitted).

In this case, defendant alleges that the trial court should not have permitted testimony that indicated that defendant had been involved in another robbery and was part of a gang. At trial, the prosecution asked a detective how defendant became a suspect in the case. The detective responded:

That came about from interviewing both Quasi Mitchell [and] Shontae Edwards. We were investigating a group. At that time, it was an alleged gang by the name of Ricochet that was in that area that was committing multiple crimes—drive-by shootings, robberies, that type of thing, and the subjects were all members of this gang. We took that information. I also found out that based on Officer Swafford's report, that one of the subjects had had a prior drug arrest for selling to a narcotics officer and I found out that [defendant] had a prior one.

On appeal, defendant alternately frames this issue as one involving either the improper admission of character evidence or highly unreliable hearsay. However, defendant's hearsay argument lacks merit, because it cannot be disputed that the evidence at issue was not offered for the truth of the matter asserted. Rather it was offered to show how the detective initially identified defendant as a suspect in this case. See *People v Fisher*, 449 Mich 441, 450; 537 NW2d 577 (1995) (noting that statements offered to show the effect they had on the listener are not hearsay).

We likewise conclude that the testimony at issue did not offend MRE 404(b). Generally, "evidence of other crimes, wrongs, or acts of an individual is inadmissible to prove a propensity to commit such acts." *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998). "Such evidence may be admissible, however, for other purposes under MRE 404(b)(1)." *Id.* Hence, other acts may properly be admitted as proof of "motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident." MRE 404(b)(1). Other acts evidence may be admitted if "(1) a party offers it to prove 'something other than a character to conduct theory' as prohibited by MRE 404(b); (2) the evidence fits the relevancy test articulated in MRE 402, as 'enforced through Rule 104(b)'; and (3) the balancing test provided by MRE 403 demonstrates that the evidence is more probative of an issue at trial than substantially unfair to the party against whom it is offered." *People v Smith*, 243 Mich App 657, 669-670; 625 NW2d 46 (2000), quoting *People v VanderVliet*, 444 Mich 52, 55, 74-75; 508 NW2d 114 (1993).

The detective's testimony was offered for a proper purpose—to rebut the misidentification defense—and had a probative value, which was not substantially outweighed by the danger of unfair prejudice. However, even if we were to conclude that the evidence was offered for an improper purpose, we would conclude that it would not warrant relief. “[A]n unresponsive, volunteered answer to a proper question is not grounds for the granting of a mistrial.” *Haywood, supra* at 228. We note that defense counsel did not object to this testimony; rather, during cross-examination, defense counsel expanded on this line of questioning—advancing the defense theory of misidentification and diminishing the credibility of the police investigation. Finally, the trial court gave a proper cautionary instruction. See *VanderVliet, supra* at 75. Therefore, there was no prejudicial error. Because there was no irregularity that was prejudicial to the rights of the defendant and impaired his ability to get a fair trial, the trial court properly denied defendant's motion for a mistrial. *Id.*

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Michael R. Smolenski

/s/ Jane M. Beckering