

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARKITA SHONTA SUDDETH,

Defendant-Appellant.

UNPUBLISHED

January 29, 2009

No. 280193

Jackson Circuit Court

LC No. 06-004325-FH

Before: Hoekstra, P.J., and Fitzgerald and Zahra, JJ.

PER CURIAM.

Defendant was found guilty by a jury of third-degree fleeing and eluding, MCL 750.602a, resisting and obstructing a police officer, MCL 750.81d(1), and driving with a suspended license, MCL 257.904(1). He was sentenced as a third habitual offender, MCL 769.11, to concurrent terms of 34 to 120 months' imprisonment for the fleeing and eluding conviction, 18 to 48 months' imprisonment for the resisting and obstructing a police officer conviction, and 5 days for the driving with a suspended license conviction, with credit for 5 days served.¹ As part of the judgment of sentence, the trial court ordered defendant to pay the county \$472 for the cost of his court appointed attorney. Defendant appeals as of right. We affirm defendant's convictions and sentences, but vacate that part of the judgment of sentence requiring him to pay appointed attorney costs and remand for further proceedings. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

First, defendant argues that the trial court, by asking him leading questions prefaced with the statements, "when the police stopped your car" and "there's a police car behind you initiating a stop...", unambiguously conveyed its belief that the police had in fact signaled defendant to stop and that defendant saw and heard those signals, which were key issues. Thus, defendant contends the trial court improperly invaded the prosecutor's role and his convictions should therefore be reversed.

Because defendant did not raise this issue at trial, the issue is unpreserved. This Court's review of an unpreserved issue is limited to determining whether the defendant demonstrated a

¹ Defendant was also charged with but acquitted of a drug possession charge.

plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

This Court has recognized that a trial court has wide discretion and power in the matter of trial conduct. Its discretion and authority, however, are not unlimited. *People v Paquette*, 214 Mich App 336, 340; 543 NW2d 342 (1995). Specifically, the trial court may question a witness, MRE 614(b), but it must do so in a manner as to “avoid any invasion of the prosecutor’s role and exercise caution so that its questions will not be intimidating, argumentative, prejudicial, unfair, or partial.” *People v Sterling*, 154 Mich App 223, 228; 397 NW2d 182 (1986). “If the trial court’s conduct pierces the veil of judicial impartiality, a defendant’s conviction must be reversed.” *People v Collier*, 168 Mich App 687, 698; 425 NW2d 118 (1988).

In determining whether the trial court’s conduct pierced the veil of judicial impartiality, the appropriate test is whether its conduct or comments unduly influenced the jury and thereby deprived the defendant of a fair and impartial trial. *Paquette, supra* at 340. “Portions of the record should not be taken out of context in order to show trial court bias against defendant; rather the record should be reviewed as a whole.” *Id.*

The trial court’s questions must be limited in scope, material to the issues in the case, and posed in a neutral manner. *People v Davis*, 216 Mich App 47, 50; 549 NW2d 1 (1996). The fact that testimony elicited by a trial court’s questions damaged a defendant’s case does not demonstrate that the trial court improperly assumed the role of surrogate prosecutor. *Id.* at 51. “As long as the questions would be appropriate if asked by either party and, further, do not give the appearance of partiality,... a trial court is free to ask questions of witnesses that assist in the search for truth.” *Id.* at 52.

Upon review of the transcript references cited by defendant, the trial court’s conduct can be deemed simply as an effort by the court to clarify testimony or elicit additional relevant information. Furthermore, the record reveals that the testimony that formed the basis for the verdict was elicited by the prosecutor before the court questioned defendant. Moreover, considering the overwhelming evidence of defendant’s guilt, defendant has failed to demonstrate a plain error affecting his substantial rights. *Carines, supra*.

Finally, considering the limited and isolated nature of the trial court’s remarks, any perceived prejudice was alleviated by the court’s instructions to the jury that its comments, rulings, questions, and instructions were not evidence, and were not intended to influence the jury or express the judge’s personal opinion. *Davis, supra*. Accordingly, the trial court did not pierce the veil of judicial impartiality by questioning defendant.

Defendant also argues on appeal that because the trial court made no inquiry or findings about his current or future ability to pay \$472 for his court-appointed attorney, this Court should vacate the order of attorney fees.

As this Court recently explained in *People v Trapp*, 280 Mich App 598, 600; ___ NW2d ___ (2008), citing *People v Dunbar*, 264 Mich App 240, 251-255; 690 NW2d 476 (2004):

A person who was afforded appointed counsel might be ordered to reimburse the county for the costs of that representation, if such reimbursement can be made

without substantial hardship. A court need not make specific findings on the record regarding the defendant's ability to pay, but must provide some indication that it considered the defendant's financial situation prior to ordering reimbursement. The amount to be reimbursed must be related to the defendant's present and future ability to pay. A court must afford the defendant notice and an opportunity to be heard prior to ordering repayment for appointed counsel expenses. [___ Mich App ___ (slip op, 1).]

The trial court's discretion to impose the costs of court-appointed counsel is codified in MCL 769.1k, which became effective on January 1, 2006. However, this codification "does not eliminate the requirement, set forth in *Dunbar, supra*, that the trial court consider a defendant's ability to pay prior to ordering reimbursement of appointed counsel costs." *Trapp, supra*. A review of the sentencing transcript shows that the trial court gave no indication that it considered defendant's ability to pay prior to ordering reimbursement. Therefore, a remand for further proceedings is necessary. *Dunbar, supra* at 251-255.

The trial court may rely on an updated report from the probation department on remand; an evidentiary hearing is not required. *Trapp, supra; Dunbar, supra* at 255 n 14. Here, as in *Trapp*, "[i]f the trial court concludes that the reimbursement requirement should be eliminated or modified, it should enter an amended judgment of sentence to that effect."

We affirm defendant's convictions and sentences but vacate the assessment of court-appointed attorney costs and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Brian K. Zahra