STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 20, 2012
v	No. 302416 Presque Isle Circuit Court
HAROLD CLAIR QUICK, Defendant-Appellant.	LC No. 10-092631-FH

Before: M. J. KELLY, P.J., and WILDER and SHAPIRO, JJ.

PER CURIAM.

Defendant Harold Clair Quick appeals by right his jury conviction for criminal sexual conduct in the third-degree. MCL 750.520d(1)(a).[1] Because there were no errors warranting relief, we affirm.

Defendant first argues that the trial court erred when it denied his motion for a mistrial, which he made after the complainant offered improper prior acts testimony. This Court reviews a trial court's decision on a motion for a mistrial for an abuse of discretion. *People v Terrell*, 289 Mich App 553, 559; 797 NW2d 684 (2010). A trial court abuses its discretion when it chooses an outcome that is outside the range of reasonable and principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). A trial court may grant a new trial to a criminal defendant on any ground that would support reversal on appeal or because it believes that the verdict has resulted in a miscarriage of justice. MCR 6.431(B); *Terrell*, 289 Mich App at 559.

On cross-examination, defendant's trial lawyer asked the complainant why she initially denied having sex with defendant during her interview with an officer, but then changed her statement a few minutes later. Complainant stated that she decided to tell the truth after the officer told her that defendant was on probation for sleeping with another 14-year-old girl. Complainant then clarified that he told her that defendant was on probation because he was

[1] The jury also convicted defendant on two counts of furnishing alcohol to a minor, MCL 436.1701(1), but those convictions are not at issue.

going to sleep with the 14-year-old, but that it did not get that far. Complainant stated that she was upset and cried when the officer told her about the other girl.[2]

Defendant moved for a mistrial but the trial court denied the motion: "I don't think it's a mistrial when it's an answer which is in response to [defense counsel's] question. I don't see why it can't be corrected. The jury—it is relatively fresh." The prosecution stipulated that defendant was not on probation for a sexual offense but rather was on probation for an alcohol offense. The trial court then instructed the jury that it could not consider complainant's statement about another 14-year-old girl for its truth and informed the jury that defendant was on probation for driving while impaired. The trial court gave a similar instruction at the close of trial.

Defendant argues that the prejudice from complainant's statement that defendant was on probation for having sex with another 14-year-old was overwhelming and devastating because it was identical to the charge at trial. It is well-settled that it is improper to present evidence of prior acts to prove that the defendant has bad character and acted consistent with that character. See *People v Starr*, 457 Mich 490, 495-496; 577 NW2d 673 (1998). However, complainant's testimony was not that defendant was on probation for having had sexual relations with another 14-year-old girl. Rather, complainant testified first that she was *told* that defendant was on probation for sleeping with another 14-year-old, and then that she was *told* that defendant was on probation because he was going to sleep with the 14-year-old. Accordingly, to the extent that her testimony explained the reason for her sudden decision to implicate defendant, it was not offered for an improper purpose. See MRE 404b(1). Furthermore, the trial court, in addition to instructing the jury several times that it could not consider the evidence for its truth, informed the jury that defendant was actually on probation for driving while impaired.

Complainant also gave her testimony in response to questioning by defendant's trial lawyer. An appellant may not benefit from an alleged error that the appellant contributed to by plan or negligence. *People v Witherspoon*, 257 Mich App 329, 333; 670 NW2d 434 (2003). And defendant's lawyer actually argued that complainant's allegations were motivated by her reaction when she learned that defendant was associating with another 14-year-old girl. Defendant may not claim on appeal that evidence was inadmissible when he purposely used it to support his theory of the case. *People v Potra*, 191 Mich App 503, 512; 479 NW2d 707 (1991).

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[2] The officer testified that complainant initially told him that she did not do anything with defendant, but then changed her story while her mother was present and consoling her. He denied that he told her that defendant was on probation for having sex with another 14-year-old. He explained that he told her that defendant was in a car with some friends and a 14-year-old girl and that defendant appeared to like associating with younger girls.

Moreover, an unresponsive, volunteered answer to a proper question is generally not grounds for a mistrial. *People v Haywood*, 209 Mich App 217, 228-229; 530 NW2d 497 (1995). Complainant was not in a position to know that her testimony might be improper. If a witness makes a mistake in giving an unresponsive answer, "the case must be a very peculiar and very strong one" to justify reversal—particularly where the trial court issued a corrective instruction. *People v Podsiad*, 295 Mich 541, 544; 295 NW 257 (1940) (quotation marks and citation omitted). The trial court did not abuse its discretion when it denied defendant's motion. *Babcock*, 469 Mich at 269.

Defendant also argues that the instructions the trial court gave to the jury following denial of the motion for mistrial were improper. The trial court invited defendant's lawyer to prepare jury instructions. And defendant's lawyer asked the trial court to give the jury an instruction to disregard the complainant's statement and asked it to inform the jury that defendant was not on probation for any type of sexual offense, but rather was on probation for an alcohol-related offense.

Defendant is entitled to a carefully crafted limiting instruction advising the jurors that they are to consider the other acts evidence only as indicative of the reasons for which the evidence is proffered to cushion any prejudicial effect flowing from the evidence. *People v Martzke*, 251 Mich App 282, 295; 651 NW2d 490 (2002). Defendant claims that the trial court's instructions emphasized complainant's statement and he suggests that the trial court should have informed the jury that complainant's testimony was wrong or mistaken and that the officer never made such a statement. The trial court did not specifically state that complainant was inaccurate, but it did contradict her testimony. The trial court explicitly stated why defendant was on probation. Additionally, the trial court instructed the jury several times that complainant's testimony should not be considered for the truth of the statement regarding probation, but only to explain why she changed her statement to the officer. Jurors are presumed to follow their instructions. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). The trial court instructed the jury as defendant requested, ensured that the jury understood that complainant's statement was not offered for its truth, and informed the jury that defendant's probation was for an alcohol-related offense. Defendant has not demonstrated any instructional error on the part of the trial court.

Defendant also argues that the prosecutor committed misconduct during closing argument by vouching for a witness and interjecting personal opinions. Defendant made no objection regarding improper witness vouching. Appellate review of allegedly improper conduct is precluded if the defendant fails to timely and specifically object, unless an objection could not have cured the error or a failure to review the issue would result in a miscarriage of justice. *People v Rodriguez*, 251 Mich App 10, 30; 650 NW2d 96 (2002).

The prosecutor did not imply special knowledge that a witness was telling the truth, but provided an explanation as to why a witness had been offered the plea deal. Reference to a plea agreement containing a promise of truthfulness is not grounds for reversal and not necessarily error unless it is used by the prosecution to suggest that the government had some special knowledge not known to the jury that the witness was testifying truthfully. *People v Bahoda*, 448 Mich 261, 276; 531 NW2d 659 (1995). A prosecutor may comment on the credibility of his own witnesses during closing argument, especially when there is conflicting evidence and the

question of the defendant's guilt depends on which witnesses the jury believes. *People v Thomas*, 260 Mich App 450, 455; 678 NW2d 631 (2004). Here, there was no physical evidence and defendant's conviction was based on the jury's assessment of the testimony of several witnesses. Defendant vigorously attacked the credibility of testimony given by Robert Wiacek, including the details of his plea arrangement. When a defendant advances a theory, the prosecutor may argue the inferences flowing from that theory. *People v Fyda*, 288 Mich App 446, 462; 793 NW2d 712 (2010). Finally, the trial court properly instructed the jury that its role was to consider Wiacek's self-interest when determining Wiacek's credibility.

Defendant also argues that the prosecutor impermissibly offered a personal opinion regarding evidence of police interview procedures that were not admitted as evidence. However, the trial court sustained defendant's objection to these statements and directed that closing argument be limited to the evidence and law in the case. Defendant has not demonstrated any prejudice or that he was denied a fair trial as a result of this argument.

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Kelly
/s/ Kurtis T. Wilder
/s/ Douglas B. Shapiro