

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WESLEY KENNETH CHARLES, II,

Defendant-Appellant.

UNPUBLISHED

August 6, 1996

No. 184038

LC No. 94-002961-FC

Before: MacKenzie, P.J., and Markey and J.M. Batzer,* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529; MSA 28.797. He was sentenced to six to thirty years in prison. Defendant appeals as of right. We affirm.

Defendant first argues that there was insufficient evidence to establish that he was armed. We disagree. In reviewing the sufficiency of the evidence in a criminal case, we must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, modified 441 Mich 1201 (1992).

"Conviction of armed robbery requires a finding that the defendant was armed either with a dangerous weapon or with an article used or fashioned in such a way as to lead a reasonable person to believe that it was a dangerous weapon at the time of the robbery." *People v Jolly*, 442 Mich 458, 465; 502 NW2d 177 (1993), citing MCL 750.529; MSA 28.797. Words alone are insufficient; there must be some objective evidence that the robber either has a dangerous weapon or has a harmless article that is used in a fashion to appear dangerous. *Jolly, supra* at 468.

At trial, the victim testified that defendant had told the victim that it was a robbery, that defendant had a gun, and that he kept his hand in his pocket at all times and moved it around to make

* Circuit judge, sitting on the Court of Appeals by assignment.

the pocket bulge. Hence, there was some objective evidence that defendant was armed. *Id.* at 468-469. Viewing this evidence in a light most favorable to the prosecution, we find that a reasonable trier of fact could conclude that the prosecution established that defendant was “armed”. *Wolfe, supra* at 515.¹

Defendant also challenges the trial court's ruling allowing the prosecutor to introduce evidence of defendant's status as a prison escapee at the time of the robbery. We find no error. "The decision whether to admit or exclude evidence is within the trial court's discretion. . . . This Court will find an abuse of discretion only when an unprejudiced person, considering the facts on which the trial court acted, would say that there was no justification or excuse for the ruling." *People v McAlister*, 203 Mich App 495, 505; 513 NW2d 431 (1994).

In this case, defendant, who was living in a halfway house at the time of the present incident, testified that he remembered the day of the robbery because, on that day, he cashed a check and visited a friend. The prosecutor wanted to introduce evidence that defendant failed to return to the halfway house, thus becoming an escapee. The trial court determined that defendant had given an incomplete picture to the jury and that the evidence was admissible to rebut defendant's specific testimony regarding why he remembered the day of the robbery.

Defendant's first claim that the information was not admissible under MRE 609 lacks merit. Our Supreme Court has said that MRE 609 is inapplicable when evidence is used to rebut specific testimony given by a defendant. *People v Taylor*, 422 Mich 407, 414-415; 373 NW2d 579 (1985). We have followed that reasoning in *People v Moore*, 164 Mich App 378, 382-383; 417 NW2d 508 (1987), modified on other grounds 433 Mich 851 (1989). In *Moore, supra* at 383, we stated:

A defendant cannot claim under oath to be a “law-abiding citizen” and ask the court to shield his blatant perjury from the jury's view under the guise of MRE 609. MRE 609 does not govern the use of evidence of prior criminal conduct to refute affirmative evidence of a criminal defendant's good character. Nor is MRE 609 “intended to apply where evidence of prior convictions is offered to rebut specific statements of the defendant who testifies at trial.” [*Id.*, quoting *Taylor, supra* at 414.]

Next, defendant argues that the prosecution could not refer to his escape status because a defendant cannot be impeached through the use of his prison sentence or his parole status. Such information is inadmissible when used to attack a defendant's general credibility. See, e.g., *People v Rappuhn*, 390 Mich 266, 272-273; 212 NW2d 205 (1973). In this case, however, the prosecution was using defendant's escape status to rebut specific testimony and not to attack defendant's general credibility.

Last, defendant argues that the prosecution improperly used an unnamed felony conviction to impeach him. Defendant is correct that unnamed felony convictions may not be used to impeach defendant's general credibility. *People v McBride*, 413 Mich 341, 345; 319 NW2d 535 (1982). In

this case, the prosecutor only used evidence of defendant's escape status, not his prior conviction. More importantly, as we have noted, information regarding defendant's escape status was not used to impeach defendant's general credibility.

Hence, we find that there was justification for the trial court's rulings under the facts of this case. *McAlister, supra* at 505. Therefore, the trial court did not abuse its discretion.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Jane E. Markey

/s/ James M. Batzer

¹ Because this Court will not consider an issue that is not set forth in or necessarily suggested by the statement of questions, involved, see *People v Yarbrough*, 183 Mich App 163, 165; 454 NW2d 419 (1990), we will not discuss defendant's challenge to the jury instructions.