STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PLEASURE LEE BETTS,

Defendant-Appellant.

UNPUBLISHED
December 9, 1997

No. 200541
Kent Circuit Court
LC No. 96-008827-FC

Before: Smolenski, P.J., and MacKenzie and Neff, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of one count of assault with intent to do great bodily harm, MCL 750.84; MSA 28.279, one count of assault with intent to rob while armed, MCL 750.89; MSA 28.284, and two counts of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to concurrent terms of two years' imprisonment for the felony-firearm convictions, such terms to be followed consecutively by concurrent terms of five to fifteen years' imprisonment for the assault with intent to commit great bodily harm conviction and fifteen to thirty years' imprisonment for the assault with intent to rob conviction. Defendant appeals as of right. We affirm.

On appeal, defendant raises three issues, none of which were preserved for our review by an objection at trial. Within each issue, defendant also argues that his counsel's failure to object to these alleged errors denied him his right to effective assistance of counsel. However, we decline to review defendant's ineffective assistance of counsel arguments because defendant did not raise these claims as part of the questions presented as required by MCR 7.212(C)(5). *People v Yarger*, 193 Mich App 532, 540 n 3; 485 NW2d 119 (1992).

I

Defendant argues that his constitutional rights were violated when a police detective testified on direct examination that defendant, following his arrest and receipt of *Miranda*[1] warnings, stated that he did not want to make a statement and told the detective "'I'll see you in court. I got my lawyers, you bring your witnesses.'" Plaintiff agrees, and we will assume for the purpose of this analysis, that the

testimony was inadmissible. See *People v McReavy*, 436 Mich 197, 201; ___ NW2d ___ (1990) (Where the record indicates that a defendant's silence is attributable to an invocation of his Fifth Amendment privilege or a reliance on *Miranda* warnings, use of his silence is error). Accordingly, because the constitutional error occurred during the presentation of the case to the jury, the only question on appeal is whether the error, when quantitatively assessed in the context of the other evidence presented, had no effect on the verdict and was, therefore, harmless beyond a reasonable doubt. *People v Belanger*, 454 Mich 517, 576-578; ___ NW2d ___ (1997); *People v People v Solomon (Amended Opinion)*, 220 Mich App 527, 535-536; 560 NW2d 651 (1996).

In this case, the detective's reference to defendant's silence was brief and, as indicated by our review of the record, unresponsive to the prosecutor's question. The detective's testimony was elicited after the jury heard the detective testify about a previous interview with defendant and before the jury heard the detective testify about a third interview with defendant. Thus, in light of the whole of the detective's testimony, the jury would not have interpreted defendant's silence as uncooperative or as an attempt to hide his guilt. Further, the unintended insertion of the constitutional error did not concern "the key decisional fulcrum of the case . . . ." Cf. *Belanger, supra*. And finally, the prosecutor did not refer to the evidence of defendant's silence during closing argument. Accordingly, we conclude that in light of the entire record the error had no effect on the jury's verdict and was, therefore, harmless beyond a reasonable doubt.

II

Defendant next argues that that his convictions should be reversed because the trial court twice improperly admitted prejudicial testimony. Because defendant failed to object at either time at trial, we review this issue only for plain error that affected substantial rights of defendant. *People v Grant*, 445 Mich 535, 547; 520 NW2d 123 (1994). With respect to the first error, we note that a police officer testified at trial that she saw defendant near the location of the robbery on the morning before the robbery occurred. This officer also testified that she knew and had had previous contacts with defendant. Defendant contends that this latter testimony raises the inference of inadmissible prior crimes and other bad acts. See MRE 404(b). We disagree. The officer did not testify that she knew defendant because she had arrested him in the past or because he had previously been in trouble with the law. Rather, her testimony indicated that she was familiar with defendant because she patrolled the area where he was observed.

Second, defendant takes issue with the police detective's testimony that the victim's roommate believed that defendant had been one of two men who had assaulted the roommate with a beer bottle a few hours before the robbery in this case. Defendant again argues that this testimony constituted inadmissible "bad acts" evidence. See MRE 404(b). However, other evidence was admitted indicating that fingerprints on the beer bottle did not match defendant's fingerprints. Moreover, defendant was not charged with this assault. Accordingly, we find no prejudice affecting defendant's substantial rights. *People v Lane*, 453 Mich 132, 140; ___ NW2d ___ (1996).

III

Last, defendant argues that the prosecutor's comments during closing argument denied him a fair trial. However, our review of the prosecutor's allegedly improper remarks is precluded because of defendant's failure to object and because failure to review the issue would not result in a miscarriage of justice. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994).

Affirmed.

/s/ Michael R. Smolenski
/s/ Barbara B. MacKenzie
/s/ Janet T. Neff

[1] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).