STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROMENTA L. POPE,

Defendant-Appellant.

UNPUBLISHED
April 6, 1999

No. 197411
Recorder's Court
LC No. 96-001636

Before: Jansen, P.J., and Holbrook, Jr., and MacKenzie, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions for assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, and possession of a firearm during the commission of a felony (hereinafter "felony-firearm"), MCL 750.227b; MSA 28.424(2). Defendant was sentenced to six to ten years' imprisonment for his assault conviction and a consecutive term of two years' imprisonment for the felony-firearm conviction. We affirm.

Defendant's first argument on appeal is that the trial court erred when it ruled that defendant could not impeach the complaining witness with a prior juvenile adjudication for breaking and entering. Defendant argues that he should have been allowed to question the witness about the conviction because it supported defendant's theory that the complaining witness had a motive to lie about defendant's role in the attack. We disagree.

We review a trial court's decision regarding the admissibility of impeachment evidence for an abuse of discretion. *People v Bartlett*, 197 Mich App 15, 19; 494 NW2d 776 (1992). At trial, defendant was unable to articulate a clear justification for the admission of evidence of the adjudication. At times defendant appears to have been arguing that the evidence was relevant because it could be used as a general attack on the victim's credibility. At other times, defendant argued that the evidence was probative on the issue of the victim's alleged bias. On appeal, defendant argues that he was only seeking to use the evidence to help support his theory of bias. Accepting defendant's assertion to this Court to be true, we focus our analysis on the issue of bias.

Defendant argues on appeal that because the juvenile adjudication "could have been pending at or around the time of the incident," then the evidence of the adjudication "could be used to establish pressure on [the victim] to lie in this case." We note that this argument was not raised before the trial court. We cannot see how the trial court can be criticized for failing to see the merit in an argument that was never made. In any event, defendant offers no evidence that the adjudication was actually pending at the time when the victim identified defendant as having directed, as well as participated in the attack.[1] If there was no pending state action at that time, then there was nothing that the state could use to place undue pressure on the victim to testify as he did. See *Tiffany v Christman Co*, 93 Mich App 267, 281; 287 NW2d 199 (1979).

Further, we conclude that defendant failed to present a sufficient offer of proof before the trial court to justify the admission of evidence relating to the victim's juvenile adjudication. MRE 103(a)(2); *People v Rockwell*, 188 Mich App 405, 410; 470 NW2d 673 (1991). Defendant argued below that evidence of the adjudication would help establish that by identifying defendant, the victim was trying to divert attention away from himself. We find this argument unpersuasive. The chain of inferences defendant was trying to draw between the juvenile adjudication and an alleged motivation to lie was, at best, highly tenuous. See *People v Perkins*, 116 Mich App 624, 629; 323 NW2d 311 (1982). This is not a case where it could be argued that the witness at issue was himself a suspect in the crime. See, e.g., *Davis v Alaska*, 415 US 308, 311; 94 S Ct 1105; 39 L Ed 2d (1974).

We conclude, therefore, that defendant has failed to establish how evidence relating to the victim's juvenile adjudication could legitimately be used to establish that the victim's testimony was motivated by self-interest. Accordingly, we find that the trial court did not abuse its discretion when it ruled that such evidence would not be admitted.

We also reject defendant's argument that the trial court erred when it refused to allow defendant to present evidence of Smith's reputation as a thief in the neighborhood. As with defendant's previous argument, we conclude that defendant's offer of proof before the trial court was insufficient. MRE 103(a)(2); *Rockwell, supra* at 410. Not only was the chain of inferences flimsy, *Perkins, supra* at 629, but the record also shows that defendant is somewhat confused about the interplay between MRE 404 and 405. Defendant argues that under MRE 405, he can offer reputation evidence to establish that the victim engaged in other crimes, which in turn can be offered under MRE 404(b) as proof of the victim's motivation to lie. This argument is built on the erroneous assumption that the rules of evidence allow for the use of reputation evidence to prove the occurrence of specific instances of conduct. Reputation evidence and specific acts are identified in the rules as distinct types of evidence. MRE 405. The uses to which the three types of evidence can be put is specifically limited. MRE 404(b), 405. Under MRE 405(a), reputation evidence can be used as proof of a person's "character or character trait;" the rule says nothing about using reputation evidence to establish the occurrence of a specific act. See also Imwinmkelreid, Evidentiary Distinctions (1993), p 42 ("The predicate for specific acts evidence is proof of the preliminary fact that the witness has *firsthand knowledge* of the act.) (Emphasis added.) Again, we see no evidence of an abuse of discretion.

Defendant next argues that the trial court erred when it admitted into evidence testimony by the victim explaining a statement made by defendant before he was attacked. The victim testified that as

defendant approached him, defendant stated that the victim had "been running in one of his [defendant's] spots." Defendant argues that it was error for the trial court to allow the victim to explain that the term "spots" refers to drug houses, because the danger of unfair prejudice outweighed any marginal probative value the testimony might have had. After reviewing the record, we see no error.

Although there is no specific reference in the record to the court having ruled against a defense objection to this testimony,[2] we observe that the record does imply that the court entertained a challenge to the admissibility of this evidence during a bench conference.[3] Assuming that such a challenge was made, we conclude that the danger of unfair prejudice did not substantially outweigh the probative value of this testimony. Under the circumstances of this case, we see no error in asking the victim to clarify his testimony for the trier of fact by explaining the meaning of this slang term.

Finally, defendant argues that he was denied a fair trial by the cumulative effect of the errors alleged on appeal. Having rejected defendant's previous allegations of error, we necessarily find this argument to be without merit. *People v Sawyer*, 215 Mich App 183, 197; 545 NW2d 6 (1996).

Affirmed.

/s/ Kathleen Jansen
/s/ Donald E. Holbrook, Jr.
/s/ Barbara B. MacKenzie

[1] Police Officer Donald Shaw testified that the victim identified defendant on September 25, 1995, six days after the attack.

[2] The record shows that defendant did not object when the prosecution asked the victim if he knew what defendant meant when he used the term "spots." Defendant also did not object when the prosecution asked the victim whether the victim was referring to "dope houses" when the victim told defendant, "I don't know what you talking about me trying to run in on any of your spots." In both of these instances, the victim testified that the term "spots" meant "drug" or "dope houses." Instead, defendant first raised an objection during the following exchange:

> *Prosecutor:* Do you know what that was specifically referring to about running in his spots?
>
> *Witness:* Yes.
>
> *Prosecutor*: Could you tell us what that was?
>
> *Witness*: Robbing.
>
> *Defense Counsel:* Your honor, I would object to that unless he has personal knowledge what he –

Court: Approach the bench, please.

After the bench conference, the trial court ruled that "[t]he objection to the form of that question is sustained." When the prosecution again attempted to ask the victim if "he knew what defendant was talking about," defendant's objection was once again sustained. The trial court also sustained defendant's objection to an attempt by the prosecution to inquire into the victim's knowledge of defendant's possible involvement in drug houses.

[3] During an on-the-record discussion held outside the presence of the jury, defense counsel made the following comment:

> This witness—And I said this from the very beginning—What uses the theory of the prosecution's case, that the motive for this particular crime on Mr. Pope's part is that it's dope related. *And I said that this would be more prejudicial than probative. You made a ruling on it,* and it came out, Your Honor. [Emphasis added.]

The court did not challenge the accuracy of this representation.