

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANNY F. ANDERSON,

Defendant-Appellant.

UNPUBLISHED

January 7, 2000

No. 206939

Oakland Circuit Court

LC No. 97-152730 FC

Before: Wilder, P.J., and Bandstra and Cavanagh, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of assault with intent to murder, MCL 750.83; MSA 28.278, one count of felonious assault, MCL 750.82; MSA 28.277, and one count of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to concurrent sentences of twenty to fifty and twenty to thirty years in prison for the assault with intent to murder convictions, and two to four years in prison for the felonious assault conviction, to be served consecutively to a term of two years in prison for the felony-firearm conviction. Defendant appeals as of right. We affirm.

At trial, defendant sought to impeach the credibility of prosecution witness Jeffery Smith by introducing evidence of his unarmed robbery conviction. Smith testified that he could not remember the date of the conviction. No determination was made regarding the age of the conviction, and Smith's testimony remained on the record. The judge then told the jury that if the conviction was more than ten years old, they were not supposed to know about it. The judge further instructed that, although the age of the conviction had not been ascertained, the jury may consider Smith's prior conviction for purposes of assessing his credibility. Specifically, the judge stated that evidence of Smith's conviction "just goes to whether his -- it goes to his credibility. It has nothing to do with any elements, the offense in this case." Because defendant did not object to the judge's comments at trial, the issue was not preserved for appeal. Accordingly, this Court will review the matter only if failure to do so would result in manifest injustice. *People v Paquette*, 214 Mich App 336, 340; 543 NW2d 342 (1995).

Defendant maintains that the judge's remark evinced a bias against defendant, which caused the jury to disregard Smith's unarmed robbery conviction. Defendant asserts that Smith was the

prosecution's principal witness, and that impeachment of his credibility was crucial to the defense. Defendant claims that the judge's instruction that Smith's conviction "has nothing to do with any elements, the offense in this case," effectively nullified defense counsel's attempt to impeach Smith's credibility. Defendant argues that the judge's remarks demonstrated bias, impeded defense counsel's efforts to cast doubt on Smith's credibility, and thereby deprived defendant of a fair and impartial trial. We disagree.

This Court stated the standard for reviewing the conduct of a trial judge as follows:

Michigan case law provides that a trial judge has wide discretion and power in matters of trial conduct. . . . The appropriate test to determine whether the trial court's comments or conduct pierced the veil of judicial impartiality is whether the trial court's conduct or comments "were of such a nature as to unduly influence the jury and thereby deprive the appellant of his right to a fair and impartial trial." [*Lansing v Hartsuff*, 213 Mich App 338, 349-350; 539 NW2d 781 (1995), quoting *People v Collier*, 168 Mich App 687, 698; 425 NW2d 118 (1988) (citations omitted).]

In this case, it does not appear that the judge's comments pierced the veil of judicial impartiality. MRE 609(a) permits evidence of a witness' prior convictions to be used to impeach his credibility. *People v Cross*, 202 Mich App 138, 146; 508 NW2d 144 (1993). MRE 609(c) limits the admissibility of such evidence to convictions that are less than ten years old. *People v Coddington*, 188 Mich App 584, 596; 470 NW2d 478 (1991). The judge correctly explained that, if Smith's conviction was more than ten years old, the jury was not supposed to know about it. The judge proceeded to instruct the jury that, although the age of Smith's conviction was unknown, the jury may consider the conviction when assessing Smith's credibility. The judge accurately instructed the jury regarding the use of evidence pursuant to MRE 609. Defendant was not denied a fair and impartial trial.

We affirm.

/s/ Kurtis T. Wilder
/s/ Richard A. Bandstra
/s/ Mark J. Cavanagh