

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PERCY WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

December 28, 2001

No. 225661

Arenac Circuit Court

LC No. 99-002617-FH

Before: Meter, P.J., and Jansen and R. D. Gotham*, JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted of felonious assault, MCL 750.82, and aggravated assault, MCL 750.81a(1). The trial court sentenced him to terms of two and one-half to six years' imprisonment for the felonious assault conviction and one year for the aggravated assault conviction. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant contends that the prosecutor's cross-examination and closing argument denied him a fair trial. Defendant did not object in either instance. Appellate review of allegedly improper conduct by the prosecutor is precluded where the defendant failed to timely and specifically object, and this Court will only review the defendant's claim for plain error. *People v Schutte*, 240 Mich App 713, 720; 613 NW2d 370 (2000). To avoid forfeiture of an unpreserved claim, the defendant must demonstrate plain error that was outcome determinative. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Reversal is warranted only when the error resulted in the conviction of an actually innocent defendant or the error seriously affected the fairness, integrity, or reputation of the proceedings. *Id.*

The prosecutor was free to impeach defendant's credibility with his prior conviction under MRE 609 and to establish the specific crime of which defendant was convicted. See *People v McBride*, 413 Mich 341, 344-345; 319 NW2d 535 (1982). The prosecutor in this case, however, did not merely use defendant's prior conviction for impeachment purposes; he also used it to portray defendant as a violent person. That was improper. *People v Jones (On Rehearing, After Remand)*, 228 Mich App 191; 579 NW2d 82 (1998); *People v William Johnson*, 54 Mich App 678, 680; 221 NW2d 452 (1974).

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

Nevertheless, we are satisfied that the error was not outcome determinative. The evidence against defendant was overwhelming. Two corrections officers testified that defendant prisoner stabbed them in the presence of several persons. Another witness offered similar testimony. The weapon or shank was taken from defendant once he was subdued. Photographs admitted at trial showed puncture wounds sustained by the officers. Furthermore, the jurors were instructed on two occasions that defendant's conviction could be considered only in assessing his credibility, and not as substantive evidence. Under these circumstances, reversal is not warranted.

Affirmed.

/s/ Patrick M. Meter

/s/ Kathleen Jansen

/s/ Roy D. Gotham