

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

ISMAEL SALEH ABDULLA,

Defendant-Appellant.

UNPUBLISHED

March 19, 2002

No. 228524

Macomb Circuit Court

LC No. 00-000012-FC

Before: Talbot, P.J., and Gage and Wilder, JJ.

PER CURIAM.

Defendant was convicted by a jury of armed robbery, MCL 750.529, carrying a concealed weapon, MCL 750.227, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to concurrent prison terms of 5 to 20 years for the armed robbery conviction, and 1-1/2 to 5 years for the concealed weapon conviction, and a consecutive two-year term for the felony-firearm conviction. He appeals as of right. We affirm.

Defendant argues that the trial court abused its discretion by refusing to grant a jury request to rehear testimony from a police officer witness. One of the jury's notes to the trial court during deliberations said in part, "Can we see Det. Leutzinger [sic] testimony re interview of defendant on 12-8[?]" The trial court responded on the record as follows:

The second part of the question is: Can we see Detective Leutzinger's testimony re: Interview of Defendant on 12-8.

Again, I cannot do that. I would have to prepare a certified record for you to get his testimony. You are required to recall based upon your memory and notes, and therefore the Court cannot assist you in further deliberations.

Defense counsel neither objected to the trial court's statement nor expressed satisfaction with it. Defendant now argues that the prosecutor mischaracterized the detective's testimony during closing argument, and that the trial court's denial of the jury's request exacerbated the prejudicial effect of the prosecutor's inaccurate comments. Because defendant failed to object to the trial court's instruction in response to the jury's request, we review this issue for plain error affecting defendant's substantial rights. *People v Carter*, 462 Mich 206, 216; 612 NW2d 144 (2000); *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). As the prosecutor concedes, the trial court improperly responded to the jury's request by foreclosing any possibility

of having the testimony reviewed at a later time. MCR 6.414(H); *People v Smith*, 396 Mich 109, 111; 240 NW2d 202 (1976); *People v Howe*, 392 Mich 670, 677; 221 NW2d 350 (1974). However, we do not agree that the prosecutor mischaracterized the witness' testimony regarding defendant's initial interview responses. In light of the other evidence against defendant, including an eyewitness identification, we find that the error did not affect defendant's substantial rights.

Defendant also argues that he was denied a fair trial because the prosecutor injected information about his prior arrest by eliciting testimony about mug shots. We note, however, that defense counsel first raised the issue of mug shots. On cross-examination of a police sergeant regarding photo showups, defense counsel asked the sergeant about another suspect:

Q. Okay. That is the individual at the bottom?

A. Yes. That was our suspect.

Q. Okay. How did you develop that picture? Where did you get that picture from to put in the array to show to [the eyewitness]?

A. I got the, this picture from Dearborn Police Department arrest records.

* * *

Q. Okay. You were given this, these photos by your officer in charge, Detective Leutzinger?

A. No, sir. I made this photo line up via their arrest computer files.

* * *

Q. Where did you make the other line up photo, the admitted Exhibit Number 4 [defendant's photo line up]?

A. I made this photo line up also at Dearborn Police Department from their computer system.

Once a defendant raises an issue, he opens the door to a full and not just selective development of that subject. *People v Allen*, 201 Mich App 98, 103; 505 NW2d 869 (1993). Defendant has waived appellate review of this issue by contributing to it by plan or negligence. *People v Griffin*, 235 Mich App 27, 46; 597 NW2d 176 (1999).

Affirmed.

/s/ Michael J. Talbot
/s/ Hilda R. Gage
/s/ Kurtis T. Wilder