

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONNY WAYNE WATKINS,

Defendant-Appellant.

UNPUBLISHED

December 20, 2002

No. 236890

Ogemaw Circuit Court

LC No. 01-001732-FH

Before: Bandstra, P.J., and Murphy and Griffin, JJ.

PER CURIAM.

Defendant appeals as of right from his jury conviction of commission of a fraudulent insurance act, MCL 500.4511(1). He received a sentence of three to fifteen years and was also ordered to pay restitution. We affirm defendant's conviction but reverse the restitution award and remand for entry of another award by the trial court. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first claims that the trial court erred in ruling that the prosecutor was permitted to attack defendant's credibility with evidence of two convictions of first-degree retail fraud, MCL 750.356c. A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion. *People v McCray*, 245 Mich App 631, 641; 630 NW2d 633 (2001). Reversal is warranted only if a substantial right of defendant is affected. MRE 103(A).

Defendant contends that the trial court failed to follow the procedures mandated by MRE 609(b) to determine the probative value and prejudicial effect of the prior convictions. However, that section does not apply to crimes containing an element of dishonesty or false statement. See MRE 609(a)(1). Whether the crimes at issue, retail fraud, contained an element of dishonesty or false statement depends on the factual circumstances underlying the convictions. *People v Parcha*, 227 Mich App 236, 246-247; 575 NW2d 316 (1997). Defendant did not argue that the factual circumstances underlying the retail fraud offenses suggested that the crimes contained no element of dishonesty or false statement.

Further, defendant did not specifically argue that these were Rule 609(a)(2) theft offenses or otherwise even reference Rule 609 in any manner. Instead, defense counsel merely stated that it "would be extremely prejudicial" to defendant to have the prior conviction evidence submitted to the factfinder.

Considering this record, we conclude that any error was forfeited. Accordingly, we can reverse only upon a determination that defendant is actually innocent or the error seriously affected the fairness, integrity, or public reputation of the trial proceedings. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999). We do not conclude that these conditions are satisfied in this case.

Defendant also argues that the trial court erred in awarding restitution in the amount of \$9,200, the victim having reported damages only in the amount of \$1,600. In response, the prosecutor admits that “little is clear” regarding the court’s reasoning for an award in excess of \$1,600. Further, the prosecutor requests that this matter be remanded for the trial court to better articulate the factfinding and/or reasoning by which the amount of the restitution award was determined. For those purposes, we reverse the restitution award and remand for entry of another award by the trial court.

We affirm in part, reverse in part, and remand. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ William B. Murphy
/s/ Richard Allen Griffin