

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWARD H. KANE,

Defendant-Appellant.

UNPUBLISHED
December 4, 2003

No. 241584
Wayne Circuit Court
LC No. 01-010165

Before: Murray, P.J. and Gage and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right his jury conviction on two counts of larceny by conversion, MCL 750.362. We affirm. This appeal is being decided without oral argument under MCR 7.214(E).

On appeal, defendant asserts that he was denied a fair trial by the prosecutor's comments about other bad acts and his appeal to the jury's civic duty. The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001). Prosecutorial comments must be read as a whole and evaluated in light of defense arguments and the relationship they bear to the evidence admitted at trial. *People v Schutte*, 240 Mich App 713, 721; 613 NW2d 370 (2000). Appellate review of allegedly improper conduct is precluded if the defendant fails to timely and specifically object, and this Court will only review the defendant's claim for plain error. *Id.*, 720. Reversal is warranted only when a plain error resulted in the conviction of an actually innocent defendant or seriously affected the fairness, integrity or public reputation of judicial proceedings. *Id.*

Defendant has not established plain error. The evidence at trial showed suspicious actions on the part of all the witnesses. The defense was that defendant did not take the money; rather he solicited and transferred what would have been an illegal campaign contribution. The prosecutor's comments were appropriate in the context of the evidence presented.

Defendant also asserts that the court erred in making several evidentiary rulings. The decision whether to admit evidence is within the discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion *People v Katt*, 468 Mich 272, 278; 662 NW2d 12 (2003). Defendant contends that the trial court abused its discretion when it sustained the prosecutor's objection to a question to William Banacki, a real estate developer, whether one way to make a campaign contribution anonymous is to use two separate accounts. Defendant

also asserts that the court abused its discretion in precluding him from testifying about what was said to him by the giver of the money order. Finally, the court precluded defendant from admitting evidence of planning commission minutes showing the basis for witness Paul Knuth's bias against him.

We find no abuse of discretion by the trial court. Although no grounds were stated for the first objection, the question was phrased in a speculative manner. Counsel did not rephrase the question, and the witness was not asked if he used two accounts in order to make the contribution anonymous. The second ruling was based on hearsay. The trial court properly ruled that defendant could not testify as to what another witness told him. MRE 801. Furthermore, the declarant testified at trial, and defendant could have obtained his testimony regarding what he said. Finally, the court acted within its discretion in limiting collateral evidence to show Knuth's bias against defendant. MRE 403; MCL 768.29. Where defendant voted in favor of Knuth's project, which was denied by the planning commission as a whole, the evidence had minimal relevance.

Affirmed.

/s/ Christopher M. Murray
/s/ Hilda R. Gage
/s/ Kirsten Frank Kelly