STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER RONALD LATHAM,

Defendant-Appellant.

UNPUBLISHED
December 19, 2006

No. 264820
Ogemaw Circuit Court
LC No. 05-002361-FH

Before: Meter, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

Defendant Christopher Ronald Latham appeals his conviction for receiving and concealing a stolen vehicle, MCL 750.535(7). Following a jury trial, defendant was convicted and sentenced to 2 to 10 years' imprisonment, as an habitual offender, third offense, MCL 769.11. Defendant argues that prosecutorial misconduct violated his right to due process and that the judgment of sentence incorrectly lists the crime for which he was convicted. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On October 11, 2004, a red pickup truck belonging to Michael Clontz was taken from his driveway in Brighton, Michigan. The truck was later found in West Branch, Michigan.

At trial, the prosecutor asked Clontz whether he knew if defendant lived with Rick Wilkerson, who lived near Clontz in Brighton. Defendant objected, arguing that the question called for hearsay unless the prosecutor could lay a foundation establishing that Clontz actually saw defendant living with Wilkerson. On cross-examination, Clontz admitted that he had never been to Wilkerson's house and never actually saw defendant at Wilkerson's house. Clontz admitted that he only knew that defendant lived at Wilkerson's house because Wilkerson's friend had told him so. The prosecutor attempted to cure the hearsay problem, but was unsuccessful. The trial court ruled that Clontz's testimony was hearsay, and defendant asked the trial court to instruct the jury to "disregard any statements made about [defendant] living in Brighton." The trial court stated that "the jury is so instructed."

However, Alyson Corcoran subsequently testified, without any objection, that defendant "goes back and forth" between Brighton and West Branch. She also testified, without objection, that defendant's mother lived in Brighton, and that she knew defendant was a Brighton resident.

During the prosecutor's closing argument, the prosecutor said:

> "Miss Corcoran testified basically very similar to Mr. Robarts. She said [defendant] came over, walked over from across the street, started having some discussions. 'How did you get up here from Brighton,' which, by the way, *knew exactly where he lives in Brighton.* 'How did you get up here?' 'Had a truck, stole the truck.' Really, mind if I see it?" [Emphasis added.]

In the rebuttal portion of the prosecutor's closing argument, the prosecutor said:

> "But the facts are in this case is [sic] that a truck was stolen, Mr. Clontz' truck, from Brighton, a place where defendant lives. Alyson Corcoran doesn't live in Brighton. Mr. Robarts doesn't live in Brighton . . . . The fact is the vehicle was stolen *in Brighton, where Mr. Latham lives,* was brought up to West Branch, driven there by Mr. Latham, and placed in the woods." [Emphasis added.]

Defendant did not object to either statement.

Defendant now argues that the prosecutor committed substantial misconduct during closing argument by impermissibly commenting on facts that were stricken from the record. Defendant argues that the prosecutor's misconduct deprived him of a fair trial, violating his right to due process. Because the alleged errors in the prosecutor's closing arguments were not preserved by a contemporaneous objection and a request for a curative instruction, appellate review is for plain error. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001). Moreover, we will not reverse on these grounds unless a timely curative instruction would necessarily fail to alleviate the error's prejudicial effect. *Id*. at 586. Although defendant correctly argues that prosecutors may not introduce facts that are not in evidence, *People v McCain*, 84 Mich App 210, 215; 269 NW2d 528 (1978), the fact argued in this case was one that had already been properly introduced. Before the prosecutor made her closing arguments, Corcoran had reestablished the fact that defendant lived in Brighton. Corcoran provided her testimony after Clontz's improper testimony was stricken from the record. The curative instruction given by the trial court after Clontz's testimony did not extend to Corcoran's testimony or forbid the prosecutor from presenting further evidence in that regard, and prosecutors are permitted to argue presented facts and the reasonable inferences that arise from them. *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995). Therefore, defendant's argument lacks factual support.

Defendant next argues on appeal that the judgment of sentence should be amended to accurately reflect the crime for which he was convicted. We note that, while the original judgment of sentence incorrectly listed defendant's crime, the error was later rectified by the trial court with an amended judgment of sentence issued on April 3, 2006. "Where a subsequent event renders it impossible for this Court to fashion a remedy, an issue becomes moot." *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994).

Affirmed.

/s/ Patrick M. Meter
/s/ Peter D. O'Connell
/s/ Alton T. Davis