STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 22, 2011
v	No. 298234 Wayne Circuit Court
RUSSELL FRANK VALLEAU, Defendant-Appellant.	LC No. 10-000963-FH

Before: M. J. KELLY, P.J., and SAAD and O'CONNELL, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of felon in possession of a firearm, MCL 750.224f, and domestic violence, MCL 750.81(2). The jury acquitted him of additional charges of felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to serve 4 to 10 years in prison for the felon-in-possession conviction and to time served for the domestic violence conviction. Because we conclude there were no errors warranting relief, we affirm.

Defendant's sole claim on appeal is that he was deprived of a fair trial when the prosecutor permitted a police officer to refer to his probationary status during his testimony. Defendant concedes that his trial lawyer did not preserve this claim of error by objecting or asking for a curative instruction. This Court reviews unpreserved claims of prosecutorial misconduct for plain error affecting substantial rights. *People v Goodin*, 257 Mich App 425, 431; 668 NW2d 392 (2003).

A prosecutor may not normally present evidence of a defendant's prior criminal activity. See *People v Spencer*, 130 Mich App 527, 537; 343 NW2d 607 (1983). Nor may a prosecutor present evidence of a defendant's prior bad acts in order to show that the defendant has a bad character and acted in conformity with that character. See MRE 404(b)(1). This is to avoid the danger of a conviction based on a defendant's history of misconduct rather than on evidence of his conduct in a particular case. *People v Starr*, 457 Mich 490, 494-495; 577 NW2d 673 (1998).

During trial, the prosecutor questioned a police officer about defendant's arrest:

Prosecutor: So after you place him in the patrol car what did you do?

Witness: Well, we ran him through the LEIN system and it came back that he had . . .

Defense Counsel: Objection, your Honor, hearsay.

Prosecutor: Okay. Without going into—so you ran him so you could get any history, if there was one?

Witness: Correct.

Prosecutor: Okay. After you ran him what did you do?

Witness: Well, it was learned that he had a probation violation and because he was drinking it was an order of probation that he was not to be drinking.

Prosecutor: Was he placed under arrest then?

Witness: Yes, he was.

The record shows that the prosecutor did not intentionally elicit the reference to defendant's criminal history. Rather, it appears that he was simply trying to elicit information that the officer only arrested defendant after a LEIN check.

Generally, a prosecutor cannot be faulted for a witness' unresponsive and volunteered answer to a proper question. See *People v Measles*, 59 Mich App 641, 643; 230 NW2d 10 (1975). In such cases, the defendant will not be entitled to relief absent evidence that the prosecutor conspired with or encouraged the witness to give the testimony at issue or otherwise knew that the witness would testify in that way. *People v Hackney*, 183 Mich App 516, 531; 455 NW2d 358 (1990). This Court will give extra scrutiny to unresponsive remarks by police officers because officers have a special obligation not to venture into forbidden areas that may prejudice the defense. *People v Holly*, 129 Mich App 405, 415-416; 341 NW2d 823 (1983).

On this record, we cannot conclude that the prosecutor knew that the officer would offer the unresponsive remark. Rather, it appears that the prosecutor was eliciting information that the officer only arrested defendant after a LEIN check. When the officer began to mention the results of the LEIN check, the prosecutor attempted to steer him away from the issue, but the officer nonetheless disclosed that defendant was on probation. The officer's response was plainly improper, but did not deny defendant a fair trial. The parties had already stipulated that defendant had a prior felony conviction, which was admissible to prove an element of the felon-in-possession charge. Thus, the jury knew that defendant had a criminal record. Further, the officer's testimony did not get into any details about the nature of defendant's prior offense. Because the officer's testimony was cumulative, the improper reference likely had little or no effect on the jury's deliberations. See *People v Gursky*, 486 Mich 596, 620-621; 786 NW2d 579 (2010). There was also very strong evidence showing that defendant possessed a firearm and

engaged in domestic violence. The victim, defendant's mother, testified that he pushed her. She also testified that defendant brought a rifle up from the basement and later placed it under the couch. She pointed out the location of the weapon to a responding police officer the following day and he retrieved a rifle from beneath the couch.

Finally, the trial court instructed the jury that it could consider defendant's prior conviction only to determine his guilt or innocence of the felon-in-possession charge and added that a "past conviction is not evidence that the Defendant committed the alleged crimes in this case." This instruction cured any minimal prejudice that defendant might have suffered. *People v Abraham*, 256 Mich App 265, 279; 662 NW2d 836 (2003) ("Jurors are presumed to follow their instructions, and instructions are presumed to cure most errors.").

There was no error warranting a new trial.

Affirmed.

/s/ Michael J. Kelly
/s/ Henry William Saad
/s/ Peter D. O'Connell