

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
July 23, 2013

v

LONNIE BRIDGES,

Defendant-Appellant.

No. 310176
Wayne Circuit Court
LC No. 11-008899-01-FC

Before: STEPHENS, P.J., and WILDER and OWENS, JJ.

PER CURIAM.

Defendant appeals by right jury convictions for manslaughter, MCL 750.321, felony firearm, MCL 750.227b, and firearm possession by a felon, MCL 750.224f. At trial, defendant claimed he shot and killed decedent in self-defense. On appeal, defendant argues prosecutorial misconduct and that the improper admission of evidence denied him the right to a fair trial. Essentially, defendant presents “an evidentiary issue framed as prosecutorial misconduct.” *People v Dobek*, 274 Mich App 58, 70; 732 NW2d 546 (2007). We affirm.

The trial court denied a pre-trial motion by the prosecutor to admit prior bad acts evidence, including evidence of a 2002 conviction for assault with intent to murder, under MRE 404(b). At trial, defendant testified on direct examination that decedent was a violent man and described two past instances in which decedent had behaved in an aggressive manner. The trial court ruled that, because defendant offered “evidence of a trait of character for aggression of the alleged victim” pursuant to MRE 404(a)(2), the prosecutor was entitled to introduce evidence of defendant’s character trait for aggression under MRE 404(a)(1). The trial court further ruled that the prosecutor could introduce such evidence by asking defendant about relevant specific instances of violent conduct under MRE 405(a).

Looking first at the evidentiary issue, a trial court’s decision to admit or exclude evidence is reviewed for an abuse of discretion. *People v Kowalski*, 492 Mich 106, 119; 821 NW2d 14 (2012). MRE 404(a)(1) provides, “if evidence of a trait of character of the alleged victim of the crime is offered by the accused and admitted under subdivision (a)(2), evidence of a trait of character for aggression of the accused [is admissible if] offered by the prosecution.” MRE 404(a)(2) permits admission of character evidence “[w]hen self-defense is an issue in a charge of homicide” and “evidence of a trait of character for aggression of the alleged victim of the crime is offered by an accused.” MRE 405(a) provides that “[i]n all cases in which evidence of

character or a trait of character of a person is admissible, . . . [o]n cross-examination, inquiry is allowable into reports of relevant specific instances of conduct.” Thus, under the clear language of MRE 404(a) and MRE 405(a), the trial court did not abuse its discretion by allowing the prosecutor to question defendant about the violent conduct underlying his 2002 conviction.

Turning to the claim of prosecutorial misconduct, this Court “review[s] de novo claims of prosecutorial misconduct on a case-by-case basis, in the context of the issues raised at trial, to determine whether a defendant was denied a fair and impartial trial.” *People v Fyda*, 288 Mich App 446, 460; 793 NW2d 712 (2010). A claim of prosecutorial misconduct “cannot be predicated on good-faith efforts to admit evidence.” *People v Noble*, 238 Mich App 647, 660; 608 NW2d 123 (1999). Here, the prosecutor’s questions about defendant’s past conduct were in keeping with the ruling of the trial court, were made in good faith, and so, cannot support a claim of prosecutorial misconduct.

As for the prosecutor’s reference to the 2002 criminal conviction resulting from that conduct, the trial court struck that evidence from the record and gave an appropriate curative instruction. “It is well established that jurors are presumed to follow their instructions.” *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). Furthermore, as the trial court persuasively said,

in a situation where this accused had to admit, because of his own statement, each and every one of the elements of the crime under consideration, the fact that the conviction was also admitted into evidence, if improper does not require a mistrial.

Examining the conduct complained of in the context of the issues raised at trial, we find that defendant was not denied a fair trial. *Fyda*, 288 Mich App at 460.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Kurtis T. Wilder
/s/ Donald S. Owens