

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DONTAE ANTWAN TAYLOR,

Defendant-Appellant.

UNPUBLISHED

July 2, 1996

No. 184576

LC No. 94003826 FC

Before: Marilyn Kelly, P.J., and Neff and J. Stempien,* JJ.

PER CURIAM.

Defendant was convicted by a jury of assault with intent to commit armed robbery, MCL 750.89; MSA 28.284, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was also determined to be an habitual offender (second), MCL 769.10; MSA 28.1082. The trial court sentenced defendant to a two-year sentence for the felony-firearm conviction, to be followed by a sentence of three to twenty years. Defendant appeals from his convictions as of right. We affirm.

I

Defendant first argues that he is entitled to a new trial because the prosecutor improperly raised the issue of defendant's unemployment to demonstrate defendant's motive for his assault on the complainant. Because defendant failed to object or request a curative instruction at trial, appellate review is foreclosed except where a curative instruction could not have eliminated the prejudicial effect of the misconduct or where failure to review the issue would result in a miscarriage of justice. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994).

We have carefully reviewed the now-challenged questions and remarks and conclude that the prosecutor's questions on cross-examination were designed to challenge defendant's direct testimony, not to establish a motive or suggest that defendant should not be believed because he was unemployed.

* Circuit judge, sitting on the Court of Appeals by assignment.

They were therefore proper. Cf. *People v Conte*, 152 Mich App 8, 14; 391 NW2d 763 (1986). Any resultant harm from the prosecutor's remark during closing argument that defendant "could have" been employed could have been cured by a prompt admonishment to the jury regarding the proper factors to consider when determining witness credibility. See *People v Daniel*, 207 Mich App 47, 56; 523 NW2d 830 (1994). Defendant was not denied his right to a fair and impartial trial. *Stanaway, supra*, 687.

Defendant insists that defense counsel's failure to object to the prosecutor's comments and remarks constitutes ineffective assistance of counsel. Counsel is presumed to have provided effective assistance and the defendant bears a heavy burden to prove otherwise. *People v Wilson*, 180 Mich App 12, 17; 446 NW2d 571 (1989). To establish a claim of ineffective assistance of counsel, a defendant must demonstrate both that counsel's performance fell below an objective standard of reasonableness and that this deficient performance prejudiced the defendant so as to deprive him of a fair trial. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994).

As noted above, the prosecutor's questions on cross-examination were proper. In addition, the decision whether to interrupt another counsel's remarks to the jury is a matter of trial strategy which will not be second-guessed on appeal. See *People v LaVearn*, 448 Mich 207, 216; 528 NW2d 721 (1995); *People v Lawless*, 136 Mich App 628, 635, 357 NW2d 724 (1984). Defendant has failed to demonstrate that he was denied his right to the effective assistance of counsel.

No error requiring reversal resulted from the prosecutor's questions and comments regarding defendant's unemployed status.

II

Defendant next argues that he is entitled to a new trial because the trial court's comments regarding an approaching storm created a coercive atmosphere for the jury's deliberations. We review claims of coerced verdicts de novo. *People v Turner*, 213 Mich App 558, 583; 540 NW2d 728 (1995). In the present case, the trial court's comments regarding an approaching storm were innocuous, made during informal small talk with the jury prior to its receiving its final instructions. The court did not suggest to the jury that it should reach a verdict by a certain time, or that it would be discharged if it could not reach a verdict by the end of the day. See *People v Vettese*, 195 Mich App 235, 244; 489 NW2d 514 (1992); *People v Malone*, 180 Mich App 347, 352-353; 447 NW2d 157 (1989). The judge's comments did not create a coercive atmosphere.

Affirmed.

/s/ Marilyn Kelly

/s/ Janet T. Neff

/s/ Jeanne Stempien