STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL DANIEL CHARO,

Defendant-Appellant.

UNPUBLISHED
October 4, 1996

No. 167077
LC No. 92-1409

Before: Michael J. Kelly, P.J., and O'Connell and Bandstra, JJ.

PER CURIAM.

Defendant and his wife were tried jointly before a jury and convicted of malicious destruction of property worth more than $100. MCL 750.377a; MSA 28.609(1). Defendant now appeals as of right, and we affirm.[1]

Defendant and his wife lived together for many years before marrying, and at the time of the majority of the events below were engaged to be married. (We will consistently refer to codefendant Lori Charo as defendant's wife although at the time the incidents underlying this prosecution began she was actually his fiancée.) In early 1992, defendant's wife learned that defendant had recently had, or was continuing to have, a sexual relationship with Cheryl Knapp, an acquaintance of theirs. Testimony at trial suggested that defendant's wife soon thereafter began a pattern of harassment directed against Knapp. However, defendant's wife testified that it was Knapp who was, in fact, harassing her.

On April 5, 1992, defendant's wife put into motion a scheme apparently designed to drive a wedge between defendant and Knapp. As related by the niece of defendant's wife, defendant's wife instructed her to "egg" defendant's two automobiles and to tell defendant that it was Knapp who was responsible. The niece egged the cars, waited a few minutes, and then told defendant that she had heard a noise outside, investigated, and had seen a specific type of vehicle driving away. Defendant discovered that his cars had been egged, and asked his wife's niece for a description of the fleeing car. She described the car as defendant's wife had instructed her to describe it – the description was that of a car that Knapp had been using.

Defendant became very angry. He and his wife retrieved a round, red can from their garage, and then left in one of his cars. The niece testified that when the two returned, defendant's wife told her that "they" had poured paint remover on the car that Knapp had been using.[2] The paint remover caused approximately $1500 worth of damage to the car.

Defendant and his wife were tried jointly and were both found guilty of malicious destruction of property worth more than $100. MCL 750.377a; MSA 28.609(1). On appeal, defendant contends that his conviction should be reversed because, first, the trial court denied his motion to sever his trial from that of his wife, and, second, the court allowed a police officer to testify as to the guilt of defendant.

With respect to defendant's contention concerning the court's denial of his motion to sever, we find no error. Defense counsel brought an impromptu, oral motion to sever moments before trial was to begin. He did not specify whether he was bringing the motion pursuant to MCR 6.121(C), Right of Severance, or MCR 6.121(D), Discretionary Severance. This ambiguous motion is not clarified in defendant's brief on appeal, where appellate defense counsel fails entirely to refer to the applicable court rule. Instead, appellate counsel supports his position that the motion for severance should have been granted with a single passing reference to one case, *People v Hurst*, 396 Mich 1; 238 NW2d 6 (1976). *Hurst* stands for the proposition that, "[w]here defenses are antagonistic and one defendant accuses the other, thus making it impossible for the defendants asking for a severance to have a fair trial, the severance should be granted." *Id*., p 6, quoting *People v Meisenhelter*, 381 Ill 378; 45 NE2d 678, 684 (1942) (internal quotation marks omitted).

In the present case, neither defendant nor his codefendant-wife accused the other. Therefore, *Hurst* is inapplicable. If appellate counsel in the single page he devoted to this issue, intended to make an argument based on a legal principle other than that for which *Hurst* stands, he effectively abandoned the argument by failing to refer this Court to pertinent legal authority. This Court will not search for authority to support a party's position. *American Transmissions, Inc* v *Attorney General*, 216 Mich App 119, 121; 548 NW2d 665 (1996). We decline to address this issue further.

With respect to defendant's contention that the trial court abused its discretion by allowing a police officer "to testify regarding his opinion of who committed the offense," we find no error requiring reversal. A witness may not, in general, give an opinion on the guilt or innocence of a defendant. *People v Buckey*, 133 Mich App 158, 163; 348 NW2d 53, rev'd on other grounds 424 Mich 1 (1985). However, here defense counsel opened the door for this testimony. Defense counsel asked the police officer whether he initially held the opinion that individuals other than defendant and codefendant committed the crime. The trial court, mistakenly, allowed this testimony. See *People v Adams*, 122 Mich App 759, 767; 333 NW2d 538 (1983), rev'd on other grounds 421 Mich 865 (1985). The officer answered in the affirmative, and described his reasons for holding this opinion initially.

The prosecution later asked the officer whether his initial opinion had changed. Again, the court mistakenly allowed this testimony. See *Buckey, supra*. The officer answered in the affirmative, and

described the factors underlying his change in opinion. Thus, the officer's testimony that, in his opinion, defendant was involved in the crime was allowed only after defense counsel elicited testimony from the officer suggesting that, in the officer's initial opinion, defendant had not been involved.

We believe that, while both instances of the officer's testimony were improper, *Buckey*, *supra*, the latter testimony served to counteract the misleading earlier testimony. Where an improper issue is raised by a defendant, as it was here, the courts generally allow the prosecution to respond. Numerous claims that an improper prosecutorial argument caused prejudice have been rejected by the appellate courts of this state where the prosecution was merely responding to an issue first raised by the defendant. See, e.g., *People v George*, 375 Mich 262; 134 NW2d 222 (1965); *People v Modelski*, 164 Mich App 337; 416 NW2d 708 (1987). Given that defense counsel initiated the admission of improper opinion testimony in the present case, we decline to find error warranting reversal where the prosecution merely elicited similar testimony meant to counteract the earlier, improper testimony.

Affirmed.

/s/ Peter D. O'Connell
/s/ Richard A. Bandstra

I concur in result only.

/s/ Michael J. Kelly

[1] Codefendant Lori Charo, defendant's wife, also appealed her conviction, but the appeal was dismissed by stipulation on June 8, 1994. See docket no. 167059.

[2] The automobile in the possession of Knapp actually belonged to someone else, one Karen Knochel, and had only been lent to Knapp. It appears that defendant's wife was aware that the car did not belong to Knapp, although it is possible that defendant's wife did not know this.