

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFREY TINSLEY,

Defendant-Appellant.

UNPUBLISHED
October 11, 1996

No. 189082
LC No. 95-000241-FC

Before: Fitzgerald, P.J., and O'Connell and T.L Ludington,* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529; MSA 28.797, first-degree home invasion, MCL 750.110(a)(2); MSA 28.305(a)(2), and habitual offender, third offense, MCL 769.11; MSA 28.1083. He was sentenced to concurrent prison terms of six to twenty years for the armed robbery conviction and four to twenty years for the home invasion conviction. Defendant appeals as of right. We affirm.

On December 10, 1994, Arnold Chard and Trenice Hughes were robbed in Chard's room at the Executive Inn in Wyoming. Chard and defendant worked construction together and were living on site at the Executive Inn while rebuilding it. Chard and Hughes both testified that defendant broke into their room, pointed a gun at them, and demanded "the money." Defendant found and stole the \$800 that Chard had in his pants pocket. Both Chard and Hughes knew defendant and positively identified defendant as the person who robbed them.

Defendant first argues that the trial court erred in ruling that defendant's prior conviction for failure to return a credit card was admissible for impeachment purposes. We disagree. The trial judge thoroughly underwent an analysis under MRE 609(a) and properly admitted defendant's prior conviction for impeachment purposes.

Defendant next claims that the prosecutor improperly introduced rebuttal testimony that could have been presented in the case-in-chief. Defendant failed to preserve this issue, and failure to review

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

the issue will not result in manifest injustice. *People v Hoffman*, 205 Mich App 1, 20; 518 NW2d 817 (1994). Chard's rebuttal testimony was directly responsive and elicited to refute the testimony of defense witness Pecola Campbell and did not introduce any new evidence relating to the crime. *People v Bettistea*, 173 Mich App 106, 126; 434 NW2d 138 (1988).

Next, defendant asserts that the prosecutor improperly shifted the burden of proof to defendant during closing arguments. Defendant did not object to the prosecutor's remarks and, therefore, appellate review of the allegedly improper remarks is precluded unless an objection could not have cured the error or a failure to review the issue would result in a miscarriage of justice. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). Because the challenged remarks were proper argument regarding reasonable inferences to be drawn from the evidence presented, *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995), failure to review the issue will not result in a miscarriage of justice. *Id.*

Defendant next argues that reversal of his conviction is required because evidence of other bad acts was improperly admitted. However, defense counsel raised the issue of defendant's alcohol and drug use during direct examination of defendant. Defendant testified that during the time of the robbery he was in Muskegon at a hotel with a friend drinking beer, smoking marijuana, and using cocaine. Defendant also testified that he had a drug and alcohol problem and that he checked himself into a program in Muskegon to overcome his addiction. On cross-examination, the prosecutor merely inquired into an issue that defendant himself raised. Because defendant voluntarily injected the evidence of his drug and alcohol abuse, review of this issue is waived. *People v Yarger*, 193 Mich App 532, 539; 485 NW2d 119 (1992).

Last, defendant maintains that he was denied the effective assistance of counsel by his attorney's failure to object to admission of the bad acts evidence. Because defendant voluntarily injected the evidence, any objection to the prosecutor's cross-examination on that matter would have been futile. Counsel is not ineffective for failing to make a futile objection. *People v Armstrong*, 175 Mich App 181, 186; 437 NW2d 343 (1989).

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Peter D. O'Connell
/s/ Thomas L. Ludington