

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARCUS PORTER,

Defendant-Appellant.

UNPUBLISHED

December 17, 1996

No. 183579

LC No. 94-068090-FC

Before: Saad, P.J., and Corrigan and R.A. Benson,* JJ

PER CURIAM.

Defendant appeals from his jury convictions of assault with intent to commit murder, MCL 750.83; MSA 28.278, felony-firearm, MCL 750.227b; MSA 28.424(2), and larceny by conversion, MCL 750.362; MSA 28.579(362). He raises one evidentiary issue on appeal; we affirm.

Matthew O'Brien arranged for his friend, David Bison, to buy marijuana from defendant and another individual. At some point in the attempted sale, defendant shot Bison, and O'Brien then transported Bison to the hospital. At the hospital, Bison and O'Brien were interviewed by police, and they both made similar statements about the events leading up to the shooting. At trial, O'Brien admitted that his statement was false, and the prosecution stipulated that both statements were "all lies" and "full of lies." Nonetheless, defense counsel sought to introduce the details of Bison and O'Brien's false statements, arguing that, although the jury knew that the two had lied, the jury should be permitted to hear the details of the lies in order to fully consider the credibility of the two witnesses. The trial judge refused to permit defense counsel to elicit this information. Although defendant claimed self-defense, the jury convicted him.

On appeal, defendant argues that the trial court erred by precluding cross-examination about the contents of the prior inconsistent statements made to police, even though the prosecutor conceded before the jury that the statements were false. We find no abuse of discretion in this ruling.

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

Defendant acknowledges that the purpose of admitting the contents of the statements would be to impeach the credibility of the witnesses. However, “[t]he purpose of extrinsic impeachment evidence is to prove that a witness made a prior inconsistent statement—not to prove the contents of the statement.” *People v Jenkins*, 450 Mich 249, 256; 537 NW2d 828 (1995). Defendant contends that he did not intend to prove that the statements were *true*, but that nonetheless, the nature of the false statements themselves were relevant to the witnesses’ credibility, and should have been admissible.

In *People v Brown*, 15 Mich App 600, 603; 167 NW2d 107 (1969), we stated:

For the purpose of impeachment, evidence is generally admissible to show previous contradictory or inconsistent statements. Thus, *if a person denies having made a previous contradictory statement*, the statement itself may be used for impeachment. It is not so clear whether a witness who states at trial that he cannot recall certain facts or cannot recall giving a prior inconsistent statement can be similarly impeached. [Emphasis added.]

Here, it was undisputed that Bison and O’Brien lied to the police in their statements, and the jury was aware of this. However, the contents of the statements would not have had any tendency to make the fact that they lied any more or less probable than it would have been without the evidence of the contents of the statements. MRE 401.¹ Therefore, we see no abuse of discretion in the trial court’s ruling.²

Affirmed.

/s/ Henry William Saad

/s/ Maura D. Corrigan

/s/ Robert A. Benson

¹ It is possible that defense counsel may have been attempting to have the statements admitted in order to insure that certain out-of-court racial epithets allegedly used by Bison, were addressed in front of the jury. If this is true, then the court’s decision was also a proper MRE 403 balancing. See also *People v Springs*, 101 Mich App 118, 125; 300 NW2d 315 (1980).

² Even if the trial court had abused its discretion, any resulting error would be harmless beyond a reasonable doubt because inclusion of this evidence would have had no effect on the verdict. Even if defendant had been permitted to impeach the credibility of O’Brien and Bison with the details of their prior inconsistent statements, defendant’s own testimony, as well as that of disinterested witnesses Bengston and Gould, defeated the claim of self-defense. Failure of the self-defense claim meant that defendant’s action was unjustified, and was, therefore, a crime.