

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TAVARES WESLEY,

Defendant-Appellant.

UNPUBLISHED

December 27, 1996

No. 180411

Detroit Recorder's Court

LC No. 94-001150

Before: Holbrook, Jr., P.J., and White and A.T. Davis, Jr.,* JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree premeditated murder, MCL 750.316; MSA 28.548, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to life imprisonment without parole for the first-degree murder conviction, and to a mandatory two-year prison term for the felony-firearm conviction. Defendant appeals as of right and we affirm.

Defendant argues that the trial court abused its discretion in allowing the prosecution to impeach its witness with a prior inconsistent statement the witness made to the police. Defendant claims that when the trial court allowed the prosecution to read back a portion of the witness' statement, for purposes of impeachment, the court allowed impermissible hearsay into evidence. We disagree. Because the record indicates that the prosecutor laid the proper foundation to impeach the witness with extrinsic evidence, read only the relevant portion of the written memorandum of the witness' statement, and because the witness then admitted that what the prosecutor read back was absolutely true, we find that the trial court did not abuse its discretion in allowing the prosecutor to impeach the witness in this fashion. *People v Jenkins*, 450 Mich 249, 259-261; 537 NW2d 828 (1995); *People v Crump*, 216 Mich App 210, 211; 549 NW2d 36 (1996).

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

Defendant next argues that the prosecutor's conduct and remarks denied defendant a fair trial. Specifically, defendant claims that the prosecutor impermissibly elicited testimony from his expert witness that defendant was in jail, denigrated defendant's expert witness, and improperly relied on hearsay impeachment evidence during closing argument. We disagree. Failure to object during trial to alleged instances of prosecutorial misconduct precludes appellate review unless the prejudicial effect would not have been cured by a cautionary instruction and failure to consider the issue would result in a miscarriage of justice. *People v Whitfield*, 214 Mich App 348, 352; 543 NW2d 347 (1995). Because defendant failed to object to any of the alleged instances of prosecutorial misconduct and a curative instruction could have cured any possible prejudice resulting from the comments, we decline to further review this issue. *Id.*

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Alton T. Davis, Jr.