STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK WAYNE MORELAND,

Defendant-Appellant.

UNPUBLISHED
February 14, 1997

No. 187914
Huron County
LC No. 95-003720-FH

Before: Michael J. Kelly, P.J., and Saad and H.A. Beach,* JJ.

PER CURIAM

Defendant appeals by right from his conviction for false pretenses with intent to defraud (value exceeding $100), MCL 750.218; MSA 28.415. The trial court sentenced defendant to 120 days in jail as part of thirty-six months of probation. We affirm.

Pursuant to a promotion agreement between defendant and the Caseville Chamber of Commerce ("COC"), defendant was to obtain insurance coverage for an ice racing event to be held during the 1994 "Shanty Days" celebration in Caseville. Defendant subsequently received and cashed checks in the sum of $946 intended as compensation for insurance premiums. However, defendant never obtained such coverage, but instead furnished a forged certificate of insurance to the COC.

I

Defendant first contends that the trial court abused its discretion when, after defendant moved for a directed verdict based on the inadequacy of the prosecution's opening statement, the court reserved its ruling and allowed the prosecution to immediately remake its opening statement. Specifically, defendant argues that the trial court's failure to immediately rule on his challenge was an *absence* of any discretion at all. We disagree. We note that defendant does *not* challenge the propriety of allowing such a second try, nor the adequacy of the amended opening statement. We find that the trial court's decision to reserve its ruling on defendant's motion pending the prosecution's second opening statement would seem to fully comport with principles of judicial economy. In any

case, a trial court has great power and wide discretion in controlling the course of a trial. *People v Smith*, 64 Mich App 263; 235 NW2d 754 (1975).

We note that the case cited by defendant in support of his contention, *People v Lytal*, 415 Mich 603; 329 NW2d 738 (1982), teaches that a trial court may not reserve *until after a defendant has testified* a ruling on a motion to impeach the defendant with prior bad acts. *Id*. at 609. The due process concern at issue in *Lytal* (i.e., the defendant's right to be free from compulsory self-incrimination) requires that a trial court make such a ruling within a specific time frame, i.e., at any point before a defendant takes the witness stand. However, no such timing implications are present here; indeed, nothing in *Lytal* indicates that the trial court in that case must have ruled on the admissibility of the prior bad acts *immediately*, only that such ruling be made prior to the defendant's testimony.

II

Defendant next contends that the trial court erred when it denied defendant's motion for a directed verdict following the close of the prosecution's case. We disagree. To sustain a conviction for the felony of false pretenses with intent to defraud (value exceeding $100), it is necessary to prove that (1) the defendant used a pretense; (2) the defendant knew the pretense was false at the time he used it; (3) the defendant intended to defraud or cheat someone; (4) another person relied on the pretense; (5) such reliance resulted in the loss of something of value; and (6) the value of the loss was in excess of $100. MCL 750.218; MSA 28.415; CJI2d 23.11. Defendant challenges the sufficiency of the proofs with regard to the second and third elements set forth above, i.e., knowledge and intent. In reviewing the denial of a motion for a directed verdict, we review the evidence presented up to the time the motion was made in the light most favorable to the prosecution to determine whether a rational trier of fact could have found the evidence sufficient to prove the essential elements of the crime beyond a reasonable doubt. *People v Peebles*, 216 Mich App 661, 664; 550 NW2d 589 (1996).

Testimony indicated that the insurance certificate that defendant supposedly procured to cover the Caseville event was a forgery, i.e., (1) defendant did not provide the original insurance certificate to the COC, but in fact only faxed a copy; (2) part of the certificate was printed with a different typeset than that routinely used by the issuing agency; (3) the face of the certificate contained an American Motorcycle Association ("AMA") sanction number, yet the Caseville event was not AMA-sanctioned; and (4) the AMA sanction number and the certificate number on the face of the certificate had both been previously issued for an entirely separate event in Stanton. Evidence also indicated that the same sanction number as was issued for the Stanton event had also appeared on certificates procured by defendant for other, separate events in Sleepy Hollow, Gun Lake and Houghton. Testimony also showed that defendant had previously promoted and procured insurance for the Stanton event for which the sanction and policy numbers that later appeared on the faked certificate had been issued.

Furthermore, when first confronted with the above discrepancies, testimony indicated that defendant claimed that (1) he was unaware of the discrepancies, and (2) that he had bought the policy from an insurance agent named Robert Cook, who had an office in Stanton and from whom defendant bought insurance for all the traveling shows that he promoted. Defendant subsequently claimed that

when he tried to contact Cook to discuss the problem, he discovered that Cook had inexplicably disappeared. However, later testimony indicated that (1) the only "Robert Cook" licensed to sell insurance in Michigan had his only office in Southfield, and had never had an office in Stanton; (2) defendant had never even met Robert Cook, let alone ever purchased insurance coverage from him; (3) Robert Cook sold life insurance exclusively, and not the type of liability coverage that defendant supposedly purchased from him; and (4) of all the events that defendant had previously promoted and for which he had procured insurance coverage, he had never indicated to any of the organizers of those events that he had procured insurance through a Robert Cook.

Finally, a receipt produced by defendant, ostensibly to indicate that he had indeed purchased the insurance in question, (1) listed a dollar amount unequal to the premium defendant had charged the COC, and (2) did not contain any indication from whom the receipt had been received, i.e., to whom defendant had supposedly paid the premium money.

Viewing the foregoing in the light most favorable to the prosecution, *Peebles*, *supra* at 664, we believe that a rational trier of fact could have found the evidence sufficient to prove beyond a reasonable doubt that defendant acted with both (1) knowledge of the fact that the insurance certificates he passed were counterfeit, and (2) intent to deceive those to whom he passed the certificates. MCL 750.218; MSA 28.415; CJI2d 23.11.

Affirmed.

/s/ Michael J. Kelly
/s/ Henry William Saad
/s/ Harry A. Beach