

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TURONALD TERRELL FRAZIER, a/k/a ROBERT
LEE MASON,

Defendant-Appellant.

UNPUBLISHED

May 23, 1997

No. 194999

Kent Circuit Court

LC No. 95-2893 FC

Before: Young, P.J., and Doctoroff and Cavanagh, JJ.

PER CURIAM.

This case arises out of an incident that occurred in the early morning hours on August 23, 1995, in which Ronny Williams and Walter Crenshaw were robbed, at gunpoint, at the home of Lorraine Harris, defendant's ex-girlfriend. Defendant was convicted by a jury of two counts of armed robbery, MCL 750.529; MSA 28.797, one count of felony-firearm, MCL 750.227b; MSA 28.424(2), and one count of felon in possession of a firearm, MCL 750.224f; MSA 28.421(6). He was sentenced as an habitual offender, third offense, to two years' imprisonment for felony-firearm, followed by concurrent sentences of 10 to 30 years for each armed robbery conviction and 2 to 5 years for the felon in possession of a firearm conviction. Defendant now appeals as of right. We affirm.

Defendant first argues that the trial court abused its discretion in admitting evidence of an alleged prior restraining order against defendant, in violation of MRE 404(b).

The prosecutor attempted to elicit testimony from defendant's ex-girlfriend that there had been a prior restraining order against defendant. The witness responded that she believed there had been one, but that it had been dropped. Defendant objected and moved for a mistrial on the basis that no such order existed; the trial court, while limiting any further questioning on the subject, denied defendant's motion and stated that no error occurred in the witness stating her opinion. We disagree with the trial court's ruling. Evidence is admissible under MRE 404(b) if it satisfies three requirements: (1) it must be offered for a proper purpose [other than establishing defendant's character to show a propensity to act in conformity therewith], (2) it must be relevant to the proper purpose, and (3) its probative value must

not be substantially outweighed by its potential for unfair prejudice. *People v Vandervliet*, 444 Mich 52, 74; 508 NW2d 114 (1993), modified on other grounds 445 Mich 1205; 520 NW2d 338 (1994).

We note at the outset that the prosecutor did not comply with the notice requirement for introducing such evidence, as required by MRE 404(b)(2). Further, we are unpersuaded that the prosecutor introduced this evidence for any purpose other than to show defendant's character for violence. Therefore, the trial court abused its discretion in admitting such evidence.

Nevertheless, we must determine whether the court's error requires reversal. Reversal is required only if the error was prejudicial, an inquiry which focuses on the nature of the error and assesses its effect in light of the weight and strength of the untainted evidence. *People v Mateo*, 453 Mich 203, 215; 551 NW2d 891 (1996). Given the overwhelming evidence of guilt presented in this case, and the fact that the trial court immediately gave a limiting instruction to the jury regarding the improper evidence, we find that the trial court's error in admitting the evidence was harmless and defendant was not prejudiced by its admission. *Id.*, 207.

Next, defendant argues that he was denied a fair trial as the result of repeated instances of prosecutorial misconduct. Specifically, defendant argues that the prosecutor in closing rebuttal improperly injected racial remarks, attacked defense counsel's credibility, shifted the burden of proof, and improperly commented on defendant's right to remain silent. Defendant preserved for review only the first of those allegations, with regard to the injection of racial remarks. In reviewing allegations of prosecutorial misconduct, we examine the remarks in context to determine whether defendant was denied a fair trial. *People v Bahoda*, 448 Mich App 261, 267; 531 NW2d 659 (1995).

Our Supreme Court stated in *Bahoda*, *supra*, that a defendant's conviction will be reversed on the basis of prosecutorial misconduct where "potentially inflammatory references are intentionally injected, with no apparent justification except to arouse prejudice." To justify reversal, therefore, defendant must show not only that the prosecutor intentionally interjected the racial remarks, but also that they were unjustified and that defendant was denied a fair trial as a result. *Id.*

In this case, defendant argued in his closing remarks that the facts did not indicate "an armed robbery that goes on every day in Charlie Sector." (Plaintiff notes on appeal that Charlie Sector is a police term assigned to the predominantly black neighborhood where the instant offenses occurred.) In closing rebuttal, the prosecutor responded by posing the question of whether the issue of the witnesses' credibility would have arisen if they were not black males. Defendant argues that the prosecutor's comments constituted error requiring reversal. We disagree.

It was noted at trial that not only were the two crucial witnesses African American, but so was every person involved in this case; it was further noted that there were no African Americans on the jury. The prosecutor argued at trial, and we agree, that his comments regarding the witnesses' ethnicity were intended to neutralize any racial biases that may have arisen as a result of defense counsel's comments about the location of the crime. Therefore, although the prosecutor intentionally injected racial remarks into his closing, defendant has failed to show that the remarks were made with the intent

of arousing prejudice; on the contrary, they were made to dispel any possibility of prejudice in the minds of the jurors. We conclude that the prosecutor's comments, viewed in context, did not result in error requiring reversal.

We further find that no miscarriage of justice would occur in our decision to decline review of defendant's remaining unpreserved allegations of prosecutorial misconduct.

Affirmed.

/s/ Robert P. Young, Jr.

/s/ Martin M. Doctoroff

/s/ Mark J. Cavanagh