

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TAYSER JOSEPH MONA,

Defendant-Appellant.

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UNPUBLISHED

September 30, 1997

No. 188075

Macomb Circuit Court

LC No. 94-000641-FC

Before: Smolenski, P.J., and Fitzgerald and Gage, JJ.

PER CURIAM.

Defendant was convicted by a jury of accessory after the fact to a felony, MCL 750.505; MSA 28.773, and mutilation of a dead body, MCL 750.160; MSA 28.357. He was subsequently convicted of being an habitual offender, fourth offense, MCL 769.11; MSA 28.1083. The habitual offender, fourth offense, conviction was dismissed and reduced to a conviction for habitual offender, third offense, pursuant to an agreement with the prosecutor that defendant would testify against James Cristini, the accomplice in this case. Defendant was sentenced to a prison term of 160 to 240 months. Defendant appeals as of right. We affirm.

Defendant's convictions arose from his involvement in the events following the murder of Scott Bussell, who was kicked to death by Cristini. Defendant admitted that he assisted Cristini in burning Bussell's body, but claimed that he acted under duress.

I

Defendant argues that several instances of prosecutorial misconduct denied him a fair trial. Defendant first contends that the prosecutor infringed upon his right to remain silent, and cites to cases applying the rule of law announced in *People v Bobo*, 390 Mich 355; 212 NW2d 190 (1973). However, *Bobo* is inapplicable in this case because the prosecutor referred to silence by defendant which occurred before he came into contact with the police. *People v Collier*, 426 Mich 23, 31; 393 NW2d 346 (1986). This silence is not constitutionally protected. *People v Schollaert*, 194 Mich App 158, 166-167; 486 NW2d 312 (1992).

Second, defendant contends that the prosecutor improperly urged the jury to defer to the opinions of the police regarding defendant's guilt when the prosecutor elicited opinion testimony from a police officer that more than one person was involved in the altercation that led to Bussell's death. Any possible error, however, was harmless because the jury did not find that defendant was involved in the actual killing.

Defendant also argues that the prosecutor shifted the burden of proof when he referred to the fact that defendant had not called witnesses in support of his duress defense during rebuttal argument. We disagree. The remarks did not shift the burden of proof, but instead were a proper argument on the credibility of defendant's theory. See *People v Fields*, 450 Mich 94, 115; 538 NW2d 356 (1995).

Defendant further contends that the prosecutor improperly injected the fact that defendant was on parole. Again, we disagree. The record reveals that the prosecutor was merely attempting to establish how the police determined that defendant was connected to the crime with the challenged line of questioning. Moreover, the witness did not clearly indicate why defendant was on parole. Instead, the jury learned the details of defendant's parole status when defendant testified that he was on parole for narcotics trafficking. Moreover, the trial court instructed the jury that it should not consider the fact that defendant was on parole either to evaluate defendant's credibility or to determine his guilt. This instruction eliminated any possible prejudice. *People v Bahoda*, 448 Mich 261, 281; 531 NW2d 659 (1995).

Finally, defendant contends that the prosecutor improperly attempted to appeal to the sympathy of the jury by stating that defendant's failure to report the crime was insensitive to the victim's family. Any prejudice caused by the remark was cured by the trial court's instruction that the case should be decided only on the basis of the evidence presented and that the arguments of the attorneys did not constitute evidence. *Bahoda, supra* at 281.

## II

Defendant argues that he was denied a fair trial when the prosecutor introduced evidence that defendant was on parole for a narcotics conviction. We disagree. A police officer testified that he was able to identify defendant through information received from a narcotics officer and later testified that defendant was on parole. The evidence of defendant's prior narcotics conviction was not introduced until defendant later testified to this fact. Once defendant introduced this evidence, the prosecutor properly cross-examined defendant on this point.

Defendant also argues that the prosecution improperly cross-examined him on the fact that he was "familiar with the criminal justice system" and his experience with the *Miranda* warnings. This line of questioning appears to have been an attempt by the prosecutor to rebut defendant's direct examination testimony that he had not reported the incident to the police because he was trying to save money to hire an attorney. In light of this testimony, it was proper for the prosecutor to ask defendant about whether he was aware, through his experience with the criminal justice system, that an attorney would be provided for him if he was unable to afford to hire one. Moreover, defendant's objection to

the prosecutor's question regarding defendant's arrest record was sustained; therefore, defendant never testified as to whether he had been arrested several times.

Defendant further argues that evidence of prior bad acts evidence was improperly admitted. The prosecutor questioned defendant about two instances of alleged dishonesty, one involving an insurance check, and one involving false pretenses. However, defendant denied both instances and the prosecutor did not pursue the matter further. The jury was properly instructed that the questions of attorneys do not constitute evidence. Therefore, defendant's argument is without merit.

Defendant also contends that the prosecution introduced evidence that he had a conviction for writing bad checks. However, the trial court ruled out of the presence of the jury that this evidence was inadmissible, and defendant does not cite to the portion of the record where this evidence was admitted.

### III

Defendant argues that error occurred when the trial court failed to instruct on the offense of accessory after the fact to mutilation of a dead body. We disagree. Defendant did not deny assisting Cristini in the mutilation of the body, but claimed that he acted under duress. Defendant's testimony at trial either supported a conviction on the principal charge of mutilation, under an aiding and abetting theory, or an acquittal if the jury believed that defendant was acting under duress at the time that he assisted Cristini in the mutilation. The evidence at trial did not suggest that defendant had no involvement in the mutilation either before or after it occurred; therefore, by definition defendant was not an accessory after the fact. *People v Perry*, 218 Mich App 520, 534; 554 NW2d 362 (1996).

### IV

Next, defendant argues that he was denied the effective assistance of counsel at trial. Because defendant did not request an evidentiary hearing regarding this claim, our review of this issue is limited to errors apparent on the record because defendant failed to move for a new trial or an evidentiary hearing. *People v Stewart (On Remand)*, 219 Mich App 38, 42; 555 NW2d 715 (1996).

Defendant first contends that counsel failed to pursue a duress defense. This contention is misplaced, as defense counsel did pursue a duress defense.

Defendant also argues that counsel failed to produce an expert witnesses to support a duress defense. Defendant was not, however, deprived of a substantial defense by such failure and, therefore, failure to call an expert witness does not constitute ineffective assistance of counsel. *People v Hoyt*, 185 Mich App 531, 537-538; 462 NW 2d 793 (1990).

Defendant also contends that counsel was not prepared for trial. Defendant has not alleged that counsel's alleged failure to prepare for trial resulted in counsel's ignorance of, and hence failure to present, valuable evidence that would have substantially benefited the accused. *Bass, supra* at slip op p 6. In fact, defendant does not point to a single specific deficiency in counsel's performance resulting from his alleged failure to prepare for trial. Therefore, this argument is also without merit.

Defendant also argues that an evidentiary hearing is necessary to determine why defense counsel abandoned a motion to quash the second-degree murder charge. We disagree. Defendant was acquitted of second degree murder and, therefore, cannot meet his burden of showing that counsel's alleged failure to pursue the motion resulted in prejudice. See *People v Blackburn*, 135 Mich App 509, 521; 354 NW2d 807 (1984).

V

Finally, defendant contends that the cumulative effect of the errors at his trial denied him a fair trial. Because we have found no prejudicial error, this argument is rendered moot. *Bahoda, supra* at 292, n 64.

Affirmed.

/s/ Michael R. Smolenski

/s/ E. Thomas Fitzgerald

/s/ Hilda R. Gage