STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY MICHAEL FLINT,

Defendant-Appellant.

UNPUBLISHED
November 14, 1997

No. 194360
Macomb Circuit Court
LC No. 94-000635-FC

Before: Jansen, P.J., and Doctoroff and Gage, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529; MSA 29.797, possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and carrying a concealed weapon, MCL 750.227; MSA 28.424. Defendant was sentenced to ten to thirty years' imprisonment for the armed robbery conviction, two years' imprisonment for the felony-firearm conviction, and thirty-two to forty-eight months' imprisonment for the carrying a concealed weapon conviction. Defendant appeals as of right and we affirm.

Defendant first argues that the trial court's response to the jury's request to review the transcript of a witness' testimony during deliberations, and the trial court's failure to reinstruct the jury on reasonable doubt, denied him a fair trial.

The jury submitted three questions to the trial court during deliberations. The jury's third question, in which it requested to review the testimony of a witness, is at issue in this appeal. The trial court informed the jury that to reproduce the requested testimony would take several hours and the jury should first attempt to exhaust its collective memories in an effort to remember the testimony. The trial court further instructed that if the jury was unable to remember relevant portions of the testimony after it had further discussed the case, and the requested testimony was necessary to continue deliberations, the trial court would provide it with the transcript.

A trial court's decision to reproduce trial testimony is within the sound discretion of the court, and will not be disturbed on appeal absent an abuse of discretion. *People v Howe*, 392 Mich 670, 675; 221 NW2d 350 (1974); *People v Davis*, 216 Mich App 47, 56; 549 NW2d 1 (1996). This

Court has repeatedly held that it is not an abuse of discretion for a trial court to advise the jury to use its best efforts to remember the requested testimony before reproducing the testimony for the jury to read. *Davis, supra* at 57; *People v Austin*, 209 Mich App 564; 531 NW2d 811 (1995), modified in part on other grounds 455 Mich 439; 566 NW2d 530 (1997). We note that the trial court did not conclusively foreclose the possibility of the jury rereading the testimony. See *Davis, supra* at 57; *Austin, supra* at 564. Therefore, we hold that the trial court did not abuse its discretion in not providing the jury with the witness' transcript and advising the jurors to first utilize their memories to recollect the testimony.

We next turn to defendant's argument that the trial court erred by refusing to reinstruct the jury on reasonable doubt at the end of its remarks to the jury during deliberations. The trial court's decision to reinstruct the jury regarding the applicable burden of proof in the case is a question of law that is reviewed de novo by this Court. *People v Hubbard (On Remand)*, 217 Mich App 459, 487; 552 NW2d 493 (1996). "To pass scrutiny, a reasonable doubt instruction, when read in its entirety, must leave no doubt in the mind of the reviewing court that the jury understood the burden that was placed upon the prosecutor and what constituted reasonable doubt." *Id*.

The trial court properly instructed the jury on the burden of proof and what constituted reasonable doubt during the initial instructions. In deciding not to reinstruct the jury on the burden of proof during deliberations, the trial court reasoned that its duty was to answer the jury's specific questions, as best as it could, without reference to other issues not raised by the jury. Moreover, the trial court noted that the jurors did not seem confused about the burden of proof, nor was there any indication that they misunderstood the trial court's initial instructions. Furthermore, the jurors had a copy of the written instruction, detailing what constituted reasonable doubt, in their possession to review during deliberations. Therefore, we are persuaded that, when reading the instructions in their entirety, the trial court adequately conveyed to the jury what constitutes reasonable doubt and how it can arise. Accordingly, no instructional error occurred by the trial court refusing to read those instructions to the jury during deliberations.

Defendant next argues that several volunteered and unresponsive remarks by a police detective who was a witness at trial, and the trial court's numerous admonitions to the jury to disregard hearsay statements and evidence of other bad acts denied defendant a fair trial. The question of whether a witness' inadmissible comments unduly prejudice a defendant is a question of law that this Court reviews de novo. *People v Conner*, 209 Mich App 419, 423; 531 NW2d 734 (1995).

Defendant first claims that the officer's reference to defendant being in custody in Wayne County when he was arrested on the present charges was an inappropriate response to the prosecutor's question pertaining to a lineup. The use of prior bad acts as character evidence at trial is generally prohibited to avoid the danger of conviction based on a defendant's history of misconduct. *People v Golochowicz*, 413 Mich 298, 308; 319 NW2d 518 (1982); *People v Miller*, 165 Mich App 32, 41; 418 NW2d 668 (1987). Under certain circumstances, enunciated in MRE 404(b), prior bad acts may be relevant as substantive evidence, and, therefore, admissible in court. *People v VanderVliet*, 444 Mich 52, 64; 508 NW2d 114 (1993), modified 445 Mich 1205 (1994).[1] The admissibility of bad acts

evidence is within the trial court's discretion. *People v Catanzarite*, 211 Mich App 573, 579; 536 NW2d 570 (1995).

We agree with defendant that the witness' response pertaining to defendant's detainment in Wayne County was inadmissible evidence because it had no relevance to the facts of this case, and did nothing more than suggest to the jury that defendant may have previously been in trouble with the law. See *VanderVliet*, *supra* at 65. Furthermore, the proffered testimony did not fall within any of the recognized exceptions for admission of bad acts evidence. MRE 404(b). However, the prosecution conceded that the witness' response provided inadmissible evidence, and the trial court promptly, and appropriately, instructed the jury to disregard the statement. Moreover, the statement was not detailed in that it did not inform the jury of a specific offense for which defendant was being held, nor did it disclose the circumstances for which he was in custody. In addition, there was no mention of defendant's previous detainment thereafter during the trial. Cf. *People v Holly*, 129 Mich App 405, 414-415; 341 NW2d 823 (1983). Thus, defendant has not shown that he was unduly prejudiced by this comment to warrant reversal of his conviction. Therefore, in light of the other evidence against defendant, we find that the trial court's curative instruction was sufficient to remedy the error, and reversal is not required.

Defendant also insists that the witness' statement indicating that defendant had an attorney present at the lineup was an unresponsive and volunteered answer which constituted inadmissible and irrelevant evidence that the trial court permitted over defendant's objection. An unresponsive, volunteered answer which injects improper evidence into a trial is not generally grounds for reversal unless the prosecutor was aware of the testimony and encouraged the witness to so respond. *People v Hackney*, 183 Mich App 516, 531; 455 NW2d 358 (1990). Furthermore, reversal is warranted for unresponsive or volunteered testimony only where the remarks were so grave that there is no other cure for the prejudice inflicted on defendant. *People v Coles*, 417 Mich 523, 554-555; 339 NW2d 440 (1983). In determining whether the comments unduly prejudiced defendant, this Court must consider the entire record to determine if defendant received a fair and impartial trial. *People v Lumsden*, 168 Mich App 286, 298; 423 NW2d 645 (1988).

We are not convinced that the witness' answers were unresponsive, that they injected impermissible evidence, or gave rise to inappropriate inferences at trial. The answers did nothing more than inform the jury that defendant had an attorney at the lineup, which was precisely the information the prosecution sought to elicit by asking the question. Therefore, we do not find any error in the trial court's decision to admit this statement.

Defendant also contends that the officer's testimony that a white Chevrolet Cavalier was stolen by an individual who later was found to be involved in this offense with defendant was inadmissible hearsay. We note that this statement was ultimately determined by the trial court to be inadmissible and a curative instruction was given to the jury. Thus, defendant was not denied a fair trial by virtue of this statement.

Defendant's final argument is that the numerous times that the trial court was required to instruct the jury to disregard alleged hearsay statements constituted a denial of defendant's right to a fair trial.

Defendant does not ask this Court to determine whether certain remarks made by the officer throughout the trial constituted hearsay and should have been ruled inadmissible. The trial court already properly determined that several of the challenged statements were, in fact, hearsay, and it excluded those remarks. Instead, defendant asks this Court to reverse his convictions because the trial court repeatedly had to instruct the jury to disregard the hearsay statements, emphasizing to the jury the nature of the impermissible testimony. Thus, defendant asserts that the combined effect of these errors essentially denied him a fair trial.

The trial court has a duty to limit the introduction of evidence and the arguments of counsel to relevant and material matters to assure that all parties that come before it receive a fair trial. *People v Ullah*, 216 Mich App 669, 674; 550 NW2d 568 (1996). We are convinced that the trial court did precisely that when it narrowed the scope of the prosecutor's inquiry to the officer's activities pertaining to the investigation, and when it properly sustained defense counsel's objections to irrelevant and inadmissible evidence. Thus, we do not find that the number and nature of the objections had the combined effect of prejudicing defendant to the extent that he did not receive a fair trial. The curative instructions provided by the trial court were sufficient to dispel any potential prejudice, and there was a substantial amount of other evidence for the jury to rely on in reaching its verdict. Therefore, we hold that defendant was not denied a fair trial because of counsel's sustained objections and the trial court's curative instructions.

Affirmed.

/s/ Kathleen Jansen
/s/ Martin M. Doctoroff
/s/ Hilda R. Gage

[1] See MRE 404(b) for a nonexclusive list of exceptions to the inadmissibility of bad acts.