

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEITHOLUS DEMETRIUS WATTS,

Defendant-Appellant.

UNPUBLISHED

July 24, 2003

No. 239709

Macomb Circuit Court

LC No. 01-002436-FH

Before: Zahra, P.J., and Talbot and Owens, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of delivery of less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), entered after a jury trial. The trial court sentenced defendant to lifetime probation, with the first twelve months to be served in jail. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant contends that the trial court abused its discretion by (i) allowing the prosecution to introduce evidence of defendant's prior convictions; and (ii) allowing the prosecution to introduce a police officer's testimony indicating that he knew defendant from prior contacts. Defendant also contends that the trial court abused its discretion in denying his motion for a mistrial.

We review the trial court's decision to admit or exclude evidence, including evidence of prior convictions for impeachment purposes, for an abuse of discretion. *People v Werner*, 254 Mich App 528, 538; 659 NW2d 688 (2002); *People v Nelson*, 234 Mich App 454, 460; 594 NW2d 114 (1999). We also review a trial court's denial of a motion for a mistrial for an abuse of discretion. *People v Alter*, 255 Mich App 194, 205; 659 NW2d 667 (2003). "A mistrial should be granted only for an irregularity that results in prejudice to the defendant and impairs his ability to get a fair trial." *Id.*, quoting *People v Haywood*, 209 Mich App 217, 228; 530 NW2d 497 (1995).

"A witness'[s] credibility may be impeached with prior convictions, MCL 600.2159, but only if the convictions satisfy the criteria set forth in MRE 609." *Nelson, supra* at 460. The crime must have contained an element of dishonesty or false statement, or contained an element of theft that was punishable by imprisonment in excess of one year and had significant probative value on the issue of credibility. MRE 609(a)(2)(A). If the witness is the defendant in a criminal

trial, the trial court must determine that the probative value of the evidence outweighs its prejudicial effect. MRE 609(a)(2)(B).

Here, defendant testified that, at the time the transaction took place, he was at his fiancée's home. He denied that he sold cocaine to anyone on that day, and asserted that the police had falsified the accusations against him. In contrast, one police officer testified that it was defendant that sold him cocaine, and another police officer, who allegedly observed the transaction from afar, also testified that defendant sold cocaine to the first police officer. Thus, there was a credibility contest between the witnesses and the police officers' identification of defendant was at issue. Evidence of defendant's prior theft crimes was probative of his veracity. We further note that the trial court's jury instructions properly informed the jury that it could consider the prior convictions only for the purpose of determining whether defendant was a credible witness, thereby minimizing the potential for unfair prejudice. Accordingly, we are not persuaded that the trial court abused its discretion in allowing defendant to be impeached with evidence of his prior convictions. *Nelson, supra* at 460. Consequently, we reject defendant's contention of error.

Defendant also challenges the admissibility of a police officer's testimony that he had prior contacts with defendant. We note that the police officer's testimony on the point was brief, the nature of the prior contact was not specified, and the evidence was relevant to the officer's ability to identify defendant from his position some sixty to eighty feet away from the transaction. Accordingly, the trial court did not abuse its discretion in allowing the evidence. *Werner, supra* at 538.

In the absence of any evidentiary errors, we conclude that the trial court did not abuse its discretion in denying defendant's motion for a mistrial. *Alter, supra* at 205.

Affirmed.

/s/ Brian K. Zahra
/s/ Michael J. Talbot
/s/ Donald S. Owens