

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MOHAMMAD HUSSIEN ELAYYAN,

Defendant-Appellant.

UNPUBLISHED

November 14, 2006

No. 263701

Oakland Circuit Court

LC Nos. 2005-200346-FC;

2005-200517-FC;

2005-200586-FH

Before: Fort Hood, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

Defendant was charged in three separate files with a total of two counts of armed robbery, MCL 750.529, carjacking, MCL 750.529a, third-degree fleeing or eluding, MCL 257.602a(3), and four counts of possession of a firearm during the commission of a felony, MCL 750.227b. He pleaded no contest to the underlying felonies and was convicted by a jury of the felony-firearm charges. Defendant appeals as of right from his jury convictions. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

During direct examination, a prosecution witness, defendant's former lover, testified that immediately before the first robbery, defendant was in a bad mood and remarked that he hated everything. When asked if defendant was more specific, the witness testified, "He hated Michigan, he hated Christmas, he hated white people. He hated everything." In his sole issue on appeal, defendant contends that the prosecutor improperly elicited this evidence, which denied him a fair trial.

"The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial (i.e., whether prejudice resulted)." *People v Abraham*, 256 Mich App 265, 272; 662 NW2d 836 (2003). Because defendant did not object to the prosecutor's questioning or the witness's testimony at trial, this issue is unpreserved and our review is limited to plain error affecting defendant's substantial rights. *People v Thomas*, 260 Mich App 450, 453-454; 678 NW2d 631 (2004); *People v Ackerman*, 257 Mich App 434, 448; 669 NW2d 818 (2003).

While a defendant's general dislike of a particular class of persons is not itself admissible to prove motive, *People v Williams*, 143 Mich App 574, 586; 374 NW2d 158 (1985), there is nothing in the record to suggest that the unsolicited comment was offered for such a purpose. Indeed, once elicited, it was never mentioned again. Further, there is no indication that it was part of a deliberate course of conduct designed to arouse the prejudices of the jury. While it may

have been “improper and probably irrelevant,” it was undoubtedly “innocuous, unintended, and not of a degree that prejudiced defendant’s right to a fair trial.” *People v Bahoda*, 448 Mich 261, 271-272; 531 NW2d 659 (1995).

Additionally, defendant has not shown that the testimony affected the outcome of the trial. It was undisputed that defendant committed the underlying felonies. The evidence showed that after the carjacking, defendant fled from the police and eventually abandoned the stolen vehicle. The police found an operable handgun under the gas pedal. One witness recalled seeing defendant in possession of a gun very similar to that recovered from the stolen truck and the victims of the robberies and carjacking testified that they saw defendant wielding a gun that was the same as, or virtually identical to, the one recovered from the stolen truck. Given such evidence, it is unlikely that defendant would have been acquitted but for the mention of defendant’s prejudices. Therefore, defendant has failed to establish plain error requiring reversal.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Christopher M. Murray
/s/ Pat M. Donofrio