

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
November 3, 2011

v

WILLIAM SANTINO RAYNES,
Defendant-Appellant.

No. 299926
Kalamazoo Circuit Court
LC No. 2010-000450-FH

Before: MARKEY, P.J., and SERVITTO and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant appeals from his conviction by a jury of unlawfully driving away a motor vehicle, MCL 750.413. Defendant was pulled over by the police for a lane-change violation while he was driving a vehicle that belonged to Amanda Dulin. This case turned entirely on credibility between defendant and Dulin as to whether defendant had Dulin's permission to be driving her vehicle at the time. Because of egregious evidentiary errors and the difficulty of finding them harmless in the context of a pure credibility contest, we reverse and remand.

Defendant specifically objects to the admission of evidence of his parole status, evidence of his prior parole violations, evidence of his drug use, and evidence of his prior convictions. We review a trial court's decision to admit or exclude evidence for an abuse of discretion. *Craig v Oakwood Hosp*, 471 Mich 67, 76; 684 NW2d 296 (2004). A trial court's decision will only be reversed where there has been an abuse of discretion. *People v Katt*, 468 Mich 272, 662 NW2d 12 (2003). An abuse of discretion will be found when a trial court selects an outcome that does not fall within the range of reasonable and principled outcomes. *People v Young*, 276 Mich App 446, 448; 740 NW2d 347 (2007). When the decision to admit evidence involves a preliminary question of law, such as whether a rule of evidence precludes admissibility, the question is reviewed de novo. *People v McDaniel*, 469 Mich 409, 412; 670 NW2d 659 (2003).

Defendant first argues that he was entitled to a mistrial because Dulin mentioned his parole status during direct examination. We disagree. Dulin's mention of defendant's parole status was inappropriate, but it was brief and was an unresponsive answer to a proper question, so it is generally not a basis for granting a mistrial. *People v Haywood*, 209 Mich App 217, 228; 530 NW2d 497 (1995). In any event, the trial court properly sent the jury out of the courtroom, admonished Dulin to refrain from further referencing defendant's parole status, and, once the jury was readmitted, instructed the jury to disregard any mention of defendant's parole status.

Juries are presumed to follow their instructions. *People v Abraham*, 256 Mich App 265, 279; 662 NW2d 836 (2003). Dulin's mention of defendant's parole status was brief, and any minimal prejudicial impact of her statement was alleviated by the trial court's prompt and commendable response and by its instruction to the jury. *People v Callon*, 256 Mich App 312, 329-330; 662 NW2d 501 (2003). No mistrial was warranted.

Inexplicably, however, the prosecutor then moved under MRE 609 to elicit testimony from defendant regarding the fact that he was facing a parole violation if convicted of his charges. Even more inexplicably, the trial court granted the motion over defendant's objection, reasoning that defendant's status as a parolee was directly relevant to his credibility because it gave him an even greater reason to lie. This was improper for a number of reasons.

Jurors are already aware that a criminal defendant has a motive to fabricate testimony in order to avoid some kind of punishment, and so juries will likely already be dubious of a defendant's veracity. *People v Allen*, 429 Mich 558, 603; 420 NW2d 499 (1988). Attempting to further impeach a defendant's testimony with the fact that he faces punishment if convicted is at best beating a clearly-dead horse. See *Id.* Additionally, "[t]he rule in Michigan has always been that neither the court nor counsel should address themselves to the question of the disposition of a defendant after the verdict." *People v Goad*, 421 Mich 20, 25; 364 NW2d 584 (1984); see also CJI2d 3.13. Although the purpose of this rule has been to avoid contaminating a jury's evaluation of a defendant's guilt or innocence with concerns about what effect its verdict will have on the defendant, the underlying fact is simply that a defendant's possible punishment has absolutely no bearing whatsoever on whether he or she actually committed any charged offense. It also has no bearing on whether a defendant has a motive to fabricate his or her testimony beyond what the jury would already know from the plain fact of him or her being a criminal defendant. Conversely, there is a serious danger that the jury would be confused or erroneously consider defendant's parole status to have some probative value. Consequently, his parole status was inadmissible pursuant to MRE 403 and defendant is entitled to a new trial.

Defendant next argues that the trial court erred in permitting the prosecutor to inquire into his *prior* parole violations, which, we note, went beyond even the trial court's grant of permission to inquire into defendant's possible present parole violation. Defendant did not object, so we review this claim for plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 752-753; 597 NW2d 130 (1999). Although prosecutors are afforded great latitude, *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995), they may not inject into trial issues broader than the guilt or innocence of the accused. *People v Rice*, 235 Mich App 429, 438; 597 NW2d 843 (1999). This line of inquiry was not tainted by the additional prohibition against considering possible punishment. Nevertheless, we are unable to perceive how defendant's prior parole violations were in any way relevant to his guilt or innocence of the charged offense. We are also unable to perceive how they have any bearing on his truthfulness. Evidence of defendant's prior parole violations was therefore improperly admitted.

Defendant next argues that the prosecutor improperly introduced graphic descriptions of defendant's drug use. We disagree. It is improper for the prosecutor to deliberately inflame the jury's prejudices, but prosecutors need not make the blandest possible presentation of their case to the jury. *People v Cowell*, 44 Mich App 623, 628; 205 NW2d 600 (1973). Under the circumstances, defendant's drug use was directly relevant to the prosecutor's theory of the case

that defendant took Dulin's car because he needed drugs, rather than because, as he claimed, Dulin needed drugs. It is conceivable that the prosecutor could have made the point less dramatically, but the prosecutor was not under any obligation to do so, defendant did not object, and the trial court properly instructed the jury that the lawyers' statements were not evidence and that it was the sole evaluator of the witnesses' credibility. These instructions dispelled any prejudice. *People v Long*, 246 Mich App 582, 588; 633 NW2d 843 (2001). We find no error.

Defendant next argues that the trial court erred when it admitted evidence of Defendant's prior convictions of attempted armed robbery, MCL 750.529, and second degree home invasion, MCL 750.110(a)(3), under MRE 609. We agree.

Prior convictions may be used to attack a witness's credibility if the requirements of MRE 609 are satisfied. *People v Meshell*, 265 Mich App 616, 634; 696 NW2d 754 (2005). Neither contains "an element of dishonesty or false statement," MRE 609(a)(1), so the trial court presumably admitted them as crimes containing an element of theft, MRE 609(a)(2). It is worth noting that although armed robbery contains some element of theft, home invasion may or may not. Furthermore, theft offenses are not automatically admitted into evidence under MRE 609, as they are not highly reflective of one's truthfulness. *People v Parcha*, 227 Mich App 236, 243; 575 NW2d 316 (1998). The trial court is required to make an additional, independent determination "that the evidence has significant probative value on the issue of credibility" and "that the probative value of the evidence outweighs its prejudicial effect." MRE 609(a)(2)(B). This requires the trial court to engage in a balancing test. *Allen*, 429 Mich at 606. Moreover, the trial court is required to articulate its analysis on the record. MRE 609(b); *People v Daniels*, 192 Mich App 658, 670-671; 482 NW2d 176 (1991). A prior conviction is inadmissible unless the conviction or defendant's release from confinement took place within the prior ten years. MRE 609(c).

The trial court simply failed to make any adequate record. The record provided to this Court does not clearly explain when defendant was released from confinement for either offense. The prosecutor appears to argue that being on parole constitutes "confinement," but has not cited any authority for this seemingly bizarre proposition, and we cannot find any. Nor is it our role to search for authority in support of a party's assertions. *Begin v Michigan Bell Telephone Co*, 284 Mich App 581, 590; 773 NW2d 271 (2009). Furthermore, it is not explained whether the home invasion entailed any kind of theft. Therefore, the record does not adequately reveal whether the convictions were technically admissible.

But even presuming they are admissible, the trial court failed to make the record required by our Supreme Court and by the plain language of MRE 609(b). When determining the probative value of the evidence, the court should only consider the degree to which the crime is indicative of veracity and the age of the conviction. *Allen*, 429 Mich at 606. Only the similarity to the charged offense and the importance of defendant's testimony to the decisional process should be considered when analyzing the prejudice factor. *Id.* Notably, even though robbery contains an element of theft, it is primarily an assault crime and has a lower probative value than other theft crimes. *Allen*, 429 Mich at 611. Here, the trial court simply announced that it had gone through the balancing test—so it recognized that it was obligated to do so—and stated that "I don't find that they're more prejudicial than probative under the circumstances," which is the opposite of the correct standard and not even an arguable articulation of any analysis. The trial

court made no determination as to whether the previous conviction had significant probative value on the issue of credibility as required by MRE 609(a)(2)(B). Whether or not defendant's prior convictions might or might not actually be admissible, the trial court committed clear, plain error by admitting them into evidence on *this* record.

Defendant finally argues that independently or cumulative the errors were sufficiently prejudicial as to warrant reversal. See *People v Knapp*, 244 Mich App 361, 377; 624 NW2d 227(2001). A defendant is not necessarily entitled to a trial free from any errors; the test is whether any errors ultimately denied him a fair trial. *People v Duff*, 165 Mich App 530, 539; 419 N.W.2d 600 (1987). Because this case was entirely a credibility contest between Defendant and Dulin, it is difficult to conclude that any errors that would cast inappropriate doubt on Defendant's credibility, or even errors that pose a serious risk of confusing the jury, could be harmless. While any of the errors discussed above might, by themselves, not warrant reversal, we feel that we have no choice but to conclude that in combination, defendant was denied a fair trial. We therefore need not consider his sentencing challenge.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Deborah A. Servitto
/s/ Amy Ronayne Krause