

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JASON MATTHEW DAVIS,

Defendant-Appellant.

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UNPUBLISHED

March 20, 2014

No. 313617

Washtenaw Circuit Court

LC No. 12-000517-FC

Before: DONOFRIO, P.J., and SAAD and METER, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions by a jury of two counts of armed robbery, MCL 750.529. The trial court sentenced him as a fourth-offense habitual offender, MCL 769.12, to concurrent terms of 180 to 480 months' imprisonment. We affirm.

Defendant's convictions arose out of robberies at a Denny's restaurant and a Circle K gas station in April 2012 in Ann Arbor.

Defendant first argues that a police officer, Detective William Stanford, made an improper interjection at trial and that this interjection requires reversal. He alternatively argues that his trial counsel was ineffective for failing to object.

As stated in *People v Holly*, 129 Mich App 405, 415-416; 341 NW2d 823 (1983), "[p]olice witnesses have a special obligation not to venture into . . . forbidden areas." "[W]hen an unresponsive remark is made by a police officer, this Court will scrutinize that statement to make sure the officer has not ventured into forbidden areas which may prejudice the defense." *Id.* at 415. Defendant frames this issue as one involving prosecutorial misconduct, arguing that the police officer's remarks should be attributed to the prosecution. We review unpreserved claims of prosecutorial misconduct for plain error affecting substantial rights. *People v Abraham*, 256 Mich App 265, 274; 662 NW2d 836 (2003).

The testimony to which defendant objects occurred during cross-examination. Officer Stanford stated that he had spoken with another officer about a possible suspect by the name of "J.D." Defense counsel asked whether anyone told him that J.D. stood for "Jason Davis." Officer Stanford answered in the negative and also stated, "Officer Stewart had prior contacts with him or attempted contacts with him, so he knew who Jason Davis, J.D., was. I didn't."

We disagree that this exchange prejudiced the defense. As noted by the prosecution, the present situation is somewhat analogous to that in *People v Steiner*, 136 Mich App 187; 355 NW2d 884 (1984). In *Steiner*, *id.* at 196, police officers testified that they had had prior contacts with the defendant. The Court stated that this testimony did not prejudice the defendant “to the extent requiring a mistrial” and distinguished the situation from cases where (1) a police officer testified about an accused’s prison-inmate number and (2) a witness testified that he had met the defendant in jail. *Id.* at 197.<sup>1</sup>

Officer Stanford merely mentioned “contacts . . . or attempted contacts” with defendant. We disagree that this rose to a level of prejudice requiring reversal, especially because the nature of the “contacts” was not explained and because considerable evidence supported defendant’s convictions. As such, we also reject defendant’s claim that he was denied the effective assistance of counsel. See *People v Armstrong*, 490 Mich 281, 290; 806 NW2d 676 (2011) (a successful ineffective-assistance claim requires a showing that the alleged error prejudiced the case).

Defendant next argues that the photographic lineup was unduly suggestive and that Samantha Burke’s<sup>2</sup> testimony about picking him out from the lineup should not have been admitted. “[T]he trial court’s decision to admit identification evidence will not be reversed unless it is clearly erroneous.” *People v Kurylczyk*, 443 Mich 289, 303; 505 NW2d 528 (1993). “Clear error exists when the reviewing court is left with the definite and firm conviction that a mistake has been made.” *Id.*

The trial court weighed in on the propriety of the photographic lineup during a September 4, 2012, hearing.<sup>3</sup> The court stated:

With regard to the lineup; I have reviewed the photographs and the other information concerning the lineup, I find nothing that is impermissibly suggestive that the Defendant is the perpetrator in this case. It appears to be in all respects an appropriate photographic lineup . . . .

Officer Stanford testified that he compiled the lineup using “other subjects who matched [defendant’s] general height, weight, age, et cetera.” The pictures were in black-and-white. Another detective testified that he showed the photographs to Burke approximately 11 hours after the robbery and that Burke “immediately” identified defendant as the robber.

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<sup>1</sup> We acknowledge that the court issued a curative instruction in *Steiner* but did not in the present case. Nevertheless, we find dispositive the relatively innocuous nature of the comments in both this case and in *Steiner*. In fact, the comments in the present case were even more innocuous than those in *Steiner*, because Officer Stanford merely mentioned “contacts . . . or attempted contacts” (emphasis added).

<sup>2</sup> Burke was the victim in the Denny’s robbery.

<sup>3</sup> The arguments during this hearing seemed to focus on the identification of defendant by a witness in the Circle K robbery, but defense counsel also mentioned Burke’s identification.

Defendant contends that the lineup made defendant's skin tone appear darker than it was in reality. We fail to see how this supports defendant's argument concerning suggestiveness, given that other people in the lineup appear to have complexions both darker and lighter than defendant's. Defendant also argues that defendant was older than others used in the array. However, we have reviewed the photographs and do not find any age discrepancy to rise to the level of undue suggestiveness. There was no undue suggestiveness in light of the totality of the circumstances surrounding the identification, *id.* at 306, such as the substantial similarities in the photographs, the short time between the crime and Burke's identification, and the sureness of Burke's identification. Reversal is unwarranted.

Affirmed.

/s/ Pat M. Donofrio  
/s/ Henry William Saad  
/s/ Patrick M. Meter