

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CARLTON BENJAMIN MCEADDY,

Defendant-Appellant.

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UNPUBLISHED

May 25, 2010

No. 290655

Washtenaw Circuit Court

LC No. 08-001025-FH

Before: SHAPIRO, P.J., and JANSEN and DONOFRIO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of larceny from a building. MCL 750.360. This case arises from a party that occurred in an Ypsilanti apartment on June 3, 2008, during which a flat screen television was stolen. At trial, the prosecution presented eyewitness testimony identifying defendant as the perpetrator. Because the trial court did not abuse its discretion when it denied defendant's motion for a mistrial and because a rational trier of fact could find, based on the evidence presented, that the prosecution proved beyond a reasonable doubt that defendant committed larceny from a building, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant first contends the trial court abused its discretion when it denied his request for a mistrial based on a police officer's unsolicited reference at trial that defendant had other outstanding warrants for his arrest. This Court reviews a trial court's denial of a motion for mistrial for an abuse of discretion. *People v Coy*, 258 Mich App 1, 17; 669 NW2d 831 (2003). "A trial court abuses its discretion when it selects an outcome that does not fall within the range of reasonable and principled outcomes." *People v Yost*, 278 Mich App 341, 353; 749 NW2d 753 (2008).

Before trial, defense counsel requested that the trial court not permit any mention of defendant's prior police contacts. The trial court agreed that there was no reason for the prosecutor to elicit that information. The police officer was present during this pre-trial discussion. At trial, the prosecutor asked the police officer about his efforts to contact defendant after the theft. The officer mentioned that he ran a LEIN check on defendant and that "he had other warrants for his arrest." Defense counsel immediately objected. The trial court found that the officer's testimony had not been an intentional violation of its ruling and declined to grant a mistrial. Also, the trial court instructed the jury as follows:

Ladies and Gentlemen of the jury, I'm going to instruct you that you are not to consider anything regarding whether [defendant] had other warrants or not. People have warrants for traffic offenses and so whether or not he had another warrant is completely immaterial and you are not to use it or consider it in any way whatsoever.

An irregularity that is prejudicial to the rights of the defendant and impairs the fairness of the trial is grounds for a mistrial. *People v Alter*, 255 Mich App 194, 205; 659 NW2d 667 (2003). "As a general rule, unresponsive testimony by a prosecution witness does not justify a mistrial unless the prosecutor knew in advance that the witness would give the unresponsive testimony or the prosecutor conspired with or encouraged the witness to give that testimony." *People v Hackney*, 183 Mich App 516, 531; 455 NW2d 358 (1990). "However, when 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." *People v Holly*, 129 Mich App 405, 415; 341 NW2d 823 (1983). "Inadmissible evidence tying a defendant to other crimes is highly prejudicial." *Id.* at 416. In this case, there is nothing in the record to indicate that the prosecutor knew the police officer would mention defendant's outstanding warrants or encouraged the officer to give such testimony. Accordingly, under the general rule, a mistrial was not warranted. *Hackney*, 183 Mich App at 531.

Defendant specifically relies on *People v Page*, 41 Mich App 99, 101-102; 199 NW2d 669 (1972), to argue that he is entitled to a new trial. In *Page*, the trial court and the attorneys were discussing a previous objection when the police officer witness interjected the fact that the defendant was observed in front of a "dope den." *Id.* at 100. Despite the trial court's cautionary instruction to the jury, this Court held that the interjection was sufficiently prejudicial to compel the granting of a mistrial. *Id.* at 101. This Court reasoned as follows:

The statement was made by a police officer, one who would normally command the respect of the jury. The statement was not made in response to a question, in fact the officer made the uncalled for statement while court and counsel were discussing the defendant's objection to a line of questioning designed to bring out that information. The statement, by its nature, was extremely inflammatory; it associated the defendant, in the minds of the jury, with either or both traffic and use of narcotics. And, of course, that information bears no relevance whatever to the defendant's guilt or innocence of the crime charged. And, finally, while the evidence adduced at defendant's trial is certainly sufficient to support the jury's conclusions, there is something less than a strong case against the defendant, and the gratuitous remark interjected into the record might well have irreparably damaged defendant's opportunity to receive a fair trial. [*Id.* at 101-102.]

The statement at issue in this case was far less damaging. Although gratuitous, the police officer's reference to other warrants did not allude to any specific crimes, was not particularly inflammatory, and the trial court's cautionary instruction suggested to the jury that the warrants might be related to a relatively minor traffic offense. The jury is presumed to have followed the court's instruction to disregard the reference to other warrants. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). Looking at the case as a whole, the officer's testimony concerning other warrants does not appear so prejudicial to the rights of defendant that it impaired the

fairness of the trial. Accordingly, the trial court did not abuse its discretion in denying the motion for a mistrial.

Defendant also argues on appeal that the prosecution failed to present sufficient evidence to prove beyond a reasonable doubt that he committed larceny from a building. At trial, defendant moved for a directed verdict, which the trial court denied. In reviewing the denial of a motion for a directed verdict, an appellate court reviews the evidence in a light most favorable to the prosecution in order to determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt. *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006). Questions of credibility and intent should be left to the trier of fact to resolve. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999).

Challenges raised in a directed verdict motion to the sufficiency of the evidence are resolved by considering all the evidence presented up to the time the defendant moved for a directed verdict. *People v Allay*, 171 Mich App 602, 605; 430 NW2d 794 (1988). Circumstantial evidence and the reasonable inferences that arise therefrom can constitute sufficient proof of the elements of a crime beyond a reasonable doubt. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). Eyewitness testimony alone may also be sufficient to support conviction. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). Any conflicts in the evidence must be resolved in favor of the prosecution. *People v Fletcher*, 260 Mich App 531, 561-562; 679 NW2d 127 (2004).

Defendant does not challenge the proof of the elements of larceny from a building per se. Rather, he challenges his identification as the perpetrator of the crime. Viewing the evidence in the light most favorable to the prosecution, we conclude there was sufficient evidence of defendant's guilt. Despite defense counsel's efforts to cast doubt on defendant's identification, based on the evidence presented, a rational trier of fact could believe the prosecution witness's identification of defendant as the perpetrator of the crime even though the identifying witness had consumed five to six beers earlier in the night. The jury could also believe the witness's testimony that even though the sun was just coming up, there was adequate light to see defendant's face as he was taking the television. We see no reason to interfere with the jury's resolution of these issues of credibility.

In sum, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could find that the prosecution proved beyond a reasonable doubt that defendant committed larceny from a building.

Affirmed.

/s/ Douglas B. Shapiro

/s/ Kathleen Jansen

/s/ Pat M. Donofrio