

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRANCE LAMAR SMITH,

Defendant-Appellant.

UNPUBLISHED

February 8, 2005

No. 251456

Washtenaw Circuit Court

LC No. 03-000142-FH

Before: Markey, P.J., and Murphy and O’Connell, JJ.

PER CURIAM.

Defendant appeals as of right his convictions for first-degree murder, MCL 750.316, and possession of a firearm while committing a felony, MCL 750.227b. We affirm.

This case arises out of the shooting death of Mayllon Collins outside his home early on the morning of November 14, 2002. At trial, evidence was presented that Mayllon Collins was a heavy user of crack cocaine and that he owed money to defendant, a known crack dealer. Eyewitness testimony placed defendant in the automobile used in the shooting and established that Collins was shot after arguing with the passenger of the vehicle about money. Testimony also connected defendant to the possible murder weapon. Leah Thomas, defendant’s former girlfriend, testified that defendant admitted committing the murder. Thomas also testified that she tried to dispose of the gun after the murder.

Defendant first asserts that he was denied a fair trial by the prosecutor’s failure to correct false testimony by two witnesses. We disagree. A prosecutor may not knowingly use false testimony to obtain a conviction and has a duty to correct false testimony. *People v Lester*, 232 Mich App 262, 277; 591 NW2d 267 (1998). A new trial is required “if the false testimony could in any reasonable likelihood have affected the judgment of the jury.” *Id.* at 280.

Defendant contends that on direct examination, Thomas, who had been granted immunity for her testimony, falsely denied that she had been promised anything in exchange for testifying. On direct examination, the prosecutor asked Thomas twice whether any promises or arrangements had been made with her about coming into court and testifying. Thomas answered “no” to both questions. Defendant contends that these answers were false, and the prosecutor had a duty to correct them. Although defendant argues that the answers to the first two questions failed to indicate the prosecutor’s grant of immunity to Thomas, the questions did not encompass the grant of immunity, but whether promises of future acts were exchanged for her testimony.

Even if these responses could be fairly characterized as false, the prosecutor corrected any ambiguity by directly asking the witness if she had received immunity, to which she honestly replied “yes.” As such, there was no false testimony that required correction by the prosecutor.

Defendant next contends that the testimony regarding the nature of the immunity was false and had to be corrected. Defendant’s contention is based on the belief that Thomas obtained transactional immunity and that her testimony, and that of deputy chief assistant prosecutor Steven Hiller, falsely stated that she received use immunity rather than transactional immunity. In the present case, the prosecutor submitted to the court a verified petition for grant of immunity under MCL 780.701. The trial court granted the petition and gave Thomas use immunity under MCL 780.702. The text of the petition substantially mirrors the text of the statute, which grants only use immunity in exchange for truthful testimony. MCL 780.702. Therefore, defendant fails to demonstrate that the testimony elicited at trial regarding the immunity was false or that the prosecutor knew that the evidence was false. *Lester, supra*.

Defendant next contends that the trial court improperly permitted testimony that defendant was a drug dealer under MRE 404(b). We disagree. We review for abuse of discretion a trial court’s decision to admit other-acts evidence. *People v Hine*, 467 Mich 242, 250; 650 NW2d 659 (2002). Defendant’s argument takes the evidence out of context. The prosecutor showed that the victim abused crack cocaine and owed defendant a substantial sum of money for drugs. This suggested defendant’s motive. *People v Hoffman*, 225 Mich App 103, 105; 570 NW2d 146 (1997). The evidence also showed that the victim was selling his personal property and scrambling to repay defendant. Because this evidence was relevant and material to the context of the offense and was not an attempt merely to prove that defendant committed the murder because he lacked moral integrity, the trial court did not abuse its discretion when it allowed the evidence. MRE 404(b); *People v Sholl*, 453 Mich 730, 741-742; 556 NW2d 851 (1996).

Finally, defendant contends that his trial counsel was constitutionally ineffective for failing to seek the correction of Thomas and Hiller’s false testimony. As already discussed, this testimony was not false and did not require correction. Because defendant’s trial counsel was not required to advocate a meritless position, see *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000), he was not ineffective for failing to petition the trial court to correct testimony that did not require correction.

Affirmed.

/s/ Jane E. Markey
/s/ William B. Murphy
/s/ Peter D. O’Connell