

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
November 15, 2012

v

WILLIAM TERRELL STANFORD,

Defendant-Appellant.

No. 307072
Bay Circuit Court
LC No. 10-010530-FH

Before: TALBOT, P.J., and BECKERING and M. J. KELLY, JJ.

PER CURIAM.

Defendant William Terrell Stanford appeals by right his jury conviction of delivery of less than 50 grams of cocaine. MCL 333.7401(2)(a)(iv). The trial court sentenced Stanford as a second habitual offender, see MCL 769.10, to serve 34 months to 30 years in prison, which he had to serve consecutive to the sentence for which he was on parole at the time of the offense. Because we conclude that there were no errors warranting relief, we affirm.

I. BASIC FACTS

Wayne Stockmeyer testified that he was a police officer with the Bay City Police Department. He stated that he arranged to purchase crack cocaine at an apartment on North Jackson Street along with a confidential informant, Danielle Wood. Stockmeyer said he acted as the undercover officer during the controlled purchase while other officers on the drug task force handled the surveillance at the scene.

Stockmeyer and Wood entered the apartment and met with Stanford. Stockmeyer had seen Stanford around Bay City in the months before the controlled purchase while he was conducting surveillance as part of other investigations. Stanford handed Stockmeyer two rocks of crack cocaine for which Stockmeyer had paid plus one additional “bonus” rock. Field and laboratory tests confirmed that the rocks contained cocaine.

Stanford testified that he did not sell drugs to Stockmeyer and had never sold drugs. Retired Bay City Police Detective John May testified on rebuttal that he had interviewed Stanford prior to the controlled purchase in connection with an unrelated offense and stated that Stanford told him that he bought and sold crack cocaine in Saginaw and Bay City. Defense counsel argued at trial that May’s testimony was inadmissible under MRE 404(b), but that even if the evidence were relevant for purposes of impeachment, it was barred because it concerned a

collateral matter. The trial court determined that the testimony was not barred under MRE 404(b) because it was permissible impeachment given Stanford's testimony that he was not a drug dealer.

II. OTHER ACTS EVIDENCE

On appeal, Stanford argues that the trial court erred when it permitted May to testify that Stanford had admitted to buying and selling crack cocaine. We review a trial court's decision to admit evidence for an abuse of discretion. *People v Layher*, 464 Mich 756, 761; 631 NW2d 281 (2001).

MRE 404(b) prohibits the admission of evidence that the defendant has engaged in bad acts in the past in order to prove that the defendant has bad character and acted in conformity with that character. See *People v Roper*, 286 Mich App 77, 91; 777 NW2d 483 (2009) (discussing the general prohibition against the use of character evidence under MRE 404(a) and MRE 404(b)). Here, however, the prosecutor did not offer May's testimony to prove that Stanford had bad character and acted in conformity with that character; rather he offered the testimony to impeach Stanford's testimony that he never sold drugs. Thus, the trial court did not err when it determined that the testimony was not prohibited under MRE 404(b).

Moreover, prior inconsistent statements by a witness may be admissible in certain cases. See MRE 613(b). Here, as required under MRE 613(b), Stanford was given the opportunity to explain his prior statement when the prosecutor asked if he had told May whether he had "ever sold crack to anyone." Stanford denied both statements, and the prosecutor properly impeached his testimony with May's testimony. The trial court did not err in admitting May's testimony.

III. PROSECUTORIAL MISCONDUCT

Stanford next argues that the prosecutor improperly vouched for the police officers who investigated the case. We review issues of prosecutorial misconduct "on a case-by-case basis, in the context of the issues raised at trial, to determine whether a defendant was denied a fair and impartial trial." *People v Fyda*, 288 Mich App 446, 460; 793 NW2d 712 (2010). "A prosecutor may not vouch for the credibility of his witnesses by suggesting that he has some special knowledge of the witnesses' truthfulness." *People v Seals*, 285 Mich App 1, 22; 776 NW2d 314 (2009). A prosecutor may, however, argue from the facts that a witness should be believed. *Id.*

During closing arguments, the prosecutor argued that the police officers who investigated the case did a thorough job:

[PROSECUTOR]. The police can do everything right, which in this case I think, and it's your decision to make—but the police did a fine job. This officer did a fine job. He did everything he could—

[DEFENSE COUNSEL]. Your Honor, I'm gonna object to this. This is completely opinion and it has nothing to do with guilt or innocence. And, furthermore, the prosecutor hasn't argued that they didn't—I mean defense hasn't.

[THE COURT]. Mr. Case?

[PROSECUTOR]. Your Honor, it's—it's to make a point. I'm not bootstrapping or—or trying to support the nature of the investigation. It's rather to make a point about the situation we find ourselves (sic) in. And I—I prefaced it by saying that 'my opinion doesn't matter', that 'it's up to you to decide'.

We do not agree that these comments constituted improper vouching. The prosecutor did not suggest that he had special knowledge that the police had done their job correctly, or that he had special knowledge that Stockmeyer or the other police witnesses were being truthful in their trial testimony. *Seals*, 285 Mich App at 22. Rather, the prosecutor stated his belief that the police investigation had successfully identified Stanford as the person who had sold drugs to Stockmeyer—that is, that the facts about the investigation show that the police officer's identification was accurate. This was a relevant response to defense counsel's argument that the police officers had wrongly identified Stanford.

In any event, the prosecutor prefaced his statements to the jury with the reminder that it was the jury's duty to decide whether the police officers had actually done a "fine job." And the trial court instructed the jury that statements by the lawyers were not evidence. A jury is presumed to follow the court's instructions. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). Therefore, on this record, Stanford has not shown that the remarks amounted to prosecutorial misconduct that prejudiced his trial.

IV. SUFFICIENCY OF THE EVIDENCE

Stanford also argues that there was insufficient evidence to establish his identity as the person who sold Stockmeyer the cocaine. This Court reviews a challenge to the sufficiency of the evidence by examining the record evidence de novo in the light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt. *Roper*, 286 Mich App at 83.

Stanford contends that Stockmeyer's report contained an inaccurate description, which undermines Stockmeyer's identification. In his report Stockmeyer listed Stanford's height and weight as 6'0" and 240 pounds, respectively. However, he agreed at trial that Stanford appeared to be closer to 5'11" tall, and to weigh about 200 pounds. Stockmeyer explained that he had used the personal information that was already entered into his department's computer system, and that he had been remiss in not checking the accuracy.

Stockmeyer explained the reason for the discrepancy between Stanford's actual appearance and the description in the report, and whether his explanation was credible or undermined his identification was for the jury to determine. Viewing the evidence in the light most favorable to the prosecutor, a rational trier of fact could have found that Stockmeyer's identification was credible. See *Roper*, 286 Mich App at 88.

Stanford also cites Wood's testimony in support of his claim that the evidence was insufficient to establish identity. Stanford finds it noteworthy that Wood testified that she did not see him deliver or sell cocaine on the day of the controlled purchase and did not remember purchasing crack cocaine from Stanford or telling Stockmeyer that she had made such a purchase. Wood testified that she was under the influence of drugs on the day of the incident

and did not remember anything that occurred that day. She agreed during cross examination that she had written a statement for defense counsel in which she stated that she had never seen Stanford deliver cocaine to anyone, but this testimony is not compelling in light of her earlier statement about her lack of recall. Moreover, Stockmeyer testified that on the date of the controlled purchase, he asked Wood to make a purchase from Stanford. Stockmeyer stated that Wood told him during an interview after the purchase that she had bought crack cocaine from Stanford on a previous occasion. Although Wood's testimony contradicted Stockmeyer's testimony, the jury could properly disregard her version of events in favor of Stockmeyer's version; and we will not second-guess that determination. *Id.*

Finally, Stanford notes that he had an alibi, which was supported by another officer's testimony. The officer served as part of the surveillance team outside the apartment the day of the incident and testified that he did not see Stanford enter or exit the apartment that day. However, Stockmeyer testified that Stanford was already in a bedroom inside the apartment when he arrived. Thus, a reasonable jury could conclude that Stanford was inside before the surveillance began.

Viewing all the evidence in the light most favorable to the prosecutor, a reasonable jury could find that Stanford was the man who sold the cocaine at issue to Stockmeyer. Therefore, there was sufficient evidence to support the conviction.

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Talbot
/s/ Jane M. Beckering
/s/ Michael J. Kelly