

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAMON FORD DIXON,

Defendant-Appellant.

UNPUBLISHED

August 9, 1996

No. 176349

LC No. 93-458 FC

Before: Murphy, P.J., and O'Connell and M.J. Matuzak,* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529; MSA 28.797, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b; MSA 28.424(2). He was sentenced to four to eight years' imprisonment for the robbery conviction, and two years' imprisonment for the felony-firearm conviction, the former sentence to run consecutive to the felony-firearm sentence. Defendant appeals as of right. We affirm.

Defendant first asserts that the admission of evidence regarding the events surrounding his arrest was prejudicial and that the trial court abused its discretion when it admitted the similar acts testimony into evidence. We agree. The introduction of testimony regarding defendant's arrest was improper because it was not relevant to and not probative of any element of the charged crimes. *People v VanderVliet*, 444 Mich 52, 74-75; 508 NW2d 114 (1993); *People v Catanzarite*, 211 Mich App 573, 578-579; 536 NW2d 570 (1995). Nevertheless, we find the admission to be harmless error, as the complainant positively identified defendant as the robber during a photographic line-up. MCR 2.613(A); MCL 769.26; MSA 28.1096; *People v Cramer*, 201 Mich App 590, 595; 507 NW2d 447 (1993).

Defendant next argues that the trial court abused its discretion when it refused to allow defendant's expert to testify on witness identification. We disagree. Expert testimony on this issue has historically been excluded unless the witness suffered from physical or mental disorders, or delusions.

* Circuit judge, sitting on the Court of Appeals by assignment.

People v Hill, 84 Mich App 90, 96-97; 269 NW2d 492 (1978). In this case, defendant failed to show that the complainant suffered from any physical or mental disorders, or delusions. In any event, the trial court read CJI2d 7.8 to the jury, alerting it to the inherent problems with eyewitness testimony. Hence, the trial court did not abuse its discretion in this instance. *People v Smith*, 425 Mich 98, 106; 387 NW2d 814 (1986); *People v England*, 176 Mich App 334, 339-340; 438 NW2d 908 (1989).

Defendant also asserts that the trial court improperly instructed the jury on reasonable doubt. We disagree. The trial court's instruction on reasonable doubt, revised CJI2d 3.2, fairly presented the issues to be tried and sufficiently protected defendant's rights. See *People v Sammons*, 191 Mich App 351, 372; 478 NW2d 901 (1991).

Defendant further argues that the trial court abused its discretion by denying defendant's motion for a mistrial. We disagree. The prosecution's redirect examination of Detective Calabrese regarding whether the "fat boy" robberies stopped after defendant's arrest was the consequence of defense counsel's cross-examination of Calabrese. Trial counsel was implying that someone other than defendant was responsible for the "fat boy" robberies. Defendant cannot now be heard to complain regarding questions asked by the prosecution on redirect when he himself "opened the door" concerning such evidence. *People v Lipps*, 167 Mich App 99, 108; 421 NW2d 586 (1988); *People v Bates*, 91 Mich App 506, 516; 283 NW2d 785 (1979). Therefore, the trial court did not abuse its discretion in denying defendant's motion for a mistrial. *People v Lugo*, 214 Mich App 699, 704; 542 NW2d 921 (1995).

Defendant also contends that the cumulative effect of the errors in his trial warrants a new trial. We disagree. After carefully reviewing the whole record, we conclude that defendant received a "fair and balanced trial." See *People v McCoy*, 392 Mich 231; 220 NW2d 456 (1974).

Defendant next argues that the verdicts were against the great weight of the evidence. We disagree. While defendant presented two alibi witnesses to account for his whereabouts during the time of the robbery, other testimony contradicted that defense and identified defendant as the robber. The trial court properly weighed the credibility of the witnesses and found the complainant's testimony more credible. *People v Herbert*, 444 Mich 466, 477; 511 NW2d 654 (1993). Hence, the trial court did not abuse its discretion in denying defendant's motion for a new trial. *Id.*; *People v DeLisle*, 202 Mich App 658, 662; 509 NW2d 885 (1993).

Lastly, defendant asserts that the trial court violated the principle of proportionality. We find no merit to this claim. Defendant's minimum sentence was within the recommended guidelines range and his sentence, therefore, is presumptively proportionate. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987); *People v Eloby*, 215 Mich App 472; 541 NW2d

48 (1996). Thus, the trial court did not abuse its discretion in imposing defendant's sentence. *People v Milbourn*, 435 Mich 630, 634-636; 461 NW2d 1 (1990).

Affirmed.

/s/ William B. Murphy

/s/ Peter D. O'Connell

/s/ Michael J. Matuzak