STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY QUINTIUT STROTHER a/k/a
ANTHONY QUINITUS STROTHER

Defendant-Appellant.

UNPUBLISHED
July 5, 1996

No. 170833
LC No. 92-005827-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff - Appellee,

v

ANTHONY Q. STROTHER,

Defendant-Appellant.

No. 170848
LC No. 93-007669-FC

Before: Smolenski, P.J., and Holbrook, Jr. and F.D. Brouillette,* JJ.

PER CURIAM.

This appeal involves two separate criminal cases. In docket number 170848, defendant was convicted by a jury of two counts of armed robbery, MCL 750.529; MSA 28.797, assault with intent to rob while armed, MCL 750.89; MSA 28.284, two counts of felonious assault, MCL 750.82; MSA 28.277 and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant pleaded guilty to being a third-offense habitual offender, MCL 769.11; MSA 28.1083. Defendant was sentenced to a term of two years' imprisonment for the felony-firearm

---

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

conviction, such sentence to be followed consecutively by concurrent terms of twenty-five to forty-five years' imprisonment for the armed robbery and assault with intent to rob convictions and five to eight years' imprisonment for the felonious assault convictions.

In docket number 170833, defendant, who had earlier pleaded guilty to receiving and concealing stolen property over $100, MCL 750.535; MSA 28.803, pleaded guilty to violating his probation by committing subsequent crimes, MCL 771.4; MSA 28.1134. Defendant was sentenced to a term of forty to sixty months' imprisonment on the underlying receiving and concealing conviction, such sentence to run concurrently with the sentences imposed in docket number 170848. Defendant appeals by right in docket numbers 170848 and 170833. We affirm.

We first consider the arguments raised in docket number 170848. Defendant argues that the trial court abused its discretion in the admission of evidence because it conditioned admitting a 911 tape defendant sought to introduce on allowing the prosecution to introduce a different 911 tape after the close of its proofs. His argument is without merit. The trial court did not exclude the tape defendant sought to introduce, it merely informed him of the consequence of admitting the tape. Defendant then made the strategic decision not to include the evidence. Further, the prosecution's tape would have been proper rebuttal as addressing the issue of defendant's identity. *Sullivan Industries, Inc v Double Seal Glass Co, Inc*, 192 Mich App 333, 348; 480 NW2d 623 (1991). Finally, any possible error was harmless because numerous witnesses identified defendant at trial and thus there was no genuine issue regarding defendant's identity. MRE 103(a); *People v Travis*, 443 Mich 668, 686; 505 NW2d 563 (1993).

Defendant next argues that error requiring reversal occurred when the prosecutor was allowed to ask an investigating detective whether there was any evidence linking to the robbery an individual one of the witnesses picked out of a line-up array. Defendant's assertion that this testimony was an impermissible opinion is without merit. The prosecutor did not ask for the detective's opinion regarding the credibility of any witness, or even of the guilt or innocence of the individual. Instead, the question was a factual one; whether there was any evidence suggesting a connection. Therefore, it was not an abuse of the trial court's discretion to allow it to be answered.

The prosecutor's questions regarding the lack of an on the scene show up did not deny defendant of a fair and impartial trial. *People v Daniel*, 207 Mich App 47, 56; 523 NW2d 830 (1994). Any implication that the police believed they had apprehended the right suspect did little to bolster the prosecution's case. The argument that the show-up was not done because the police were sure they had the right suspect was only one possible explanation. Other explanations were plausible and defendant was free to point them out on redirect examination or in closing arguments. Therefore no miscarriage of justice resulted from the questions. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994).

There is no merit to defendant's argument that his sentences were disproportionately severe.

People v Milbourn, 435 Mich 630, 635-636, 654; 461 NW2d 1 (1990). Simply because defendant received relatively light sentences for his previous felonies did not indicate that special leniency was in order. Defendant failed to take advantage of the opportunities for rehabilitation that had been offered him, instead violating probation by committing further crimes. Further, defendant's conduct put the victims in extreme danger, as well as terrorizing them in their home.

In docket number 170833, because defendant raises no meritorious issues regarding his plea to violating his probation, this Court need not reach the issues he raises regarding the plea. In addition, because defendant failed to move before the trial court to withdraw his plea, defendant failed to preserve for appeal the issue of an inadequate factual basis for the plea. *People v Kaczorowski*, 190 Mich App 165, 172; 475 NW2d 861 (1991). Further, the issue was waived because defendant's plea was unconditional. *People v Kelley*, 181 Mich App 95, 97; 449 NW2d 109 (1989).

Affirmed.

/s/ Michael R. Smolenski
/s/ Donald E. Holbrook, Jr.
/s/ Francis D. Brouillette