

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERRY WORD,

Defendant-Appellant.

UNPUBLISHED

September 20, 1996

No. 164441

LC No. 92-120162 FH

Before: MacKenzie, P.J. and Saad and C. F. Youngblood,* JJ.

PER CURIAM.

A jury convicted defendant of possession of less than twenty five grams of heroin, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), carrying a concealed weapon (CCW), MCL 750.227; MSA 28.424, and concealing or misrepresenting the identity of a motor vehicle without intent to mislead, MCL 750.415(1); MSA 28.647(1). He subsequently pleaded guilty to being an habitual offender, third offense, MCL 769.11; MSA 28.1083. The judge sentenced defendant as an habitual offender to two and one-half to ten years' imprisonment for the heroin possession and CCW convictions, and a ninety-day jail term for misrepresenting the identity of a motor vehicle. Defendant appeals and we affirm.

The arresting officer, Robert Burkart, testified that he stopped defendant for speeding. The name on the car registration did not match the name on defendant's driver's license. Burkart saw a crack pipe on the front seat of the car and asked defendant to get out of the vehicle. As he got out, defendant threw some papers on the ground. Burkart also noticed a box of cartridges between defendant's legs. Burkart patted down defendant and found a loaded pistol in his waistband. Burkart then arrested defendant. A subsequent search revealed that the VIN numbers on the car had been altered and that the papers thrown by defendant were packets of narcotics.

At trial, defendant denied that he owned the car that he was driving and claimed it was owned by a friend of his. Defendant disputed that there was a crack pipe on the front seat, a pistol in his

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

waistband, or a box of cartridges between his legs. Defendant further denied knowing that there were packets of heroin in the car and denied throwing pieces of paper on the ground.

Defendant raises four issues on appeal, none of which require reversal.

I.

Defendant argues that he was improperly tried and convicted of possession of less than twenty five grams of heroin despite the fact that he was never charged with that crime. We disagree.

The initial information charged defendant with possession of cocaine rather than heroin. At trial, the judge amended the information to correctly identify the controlled substance as heroin. This amendment did not prejudice defendant, who denied knowing that there were drugs in the car and argued that they did not belong to him. The circuit court's ruling was proper. MCL 767.76; MSA 28.1016; *People v Weathersby*, 204 Mich App 98, 103; 514 NW2d 493 (1994).

II.

Defendant next claims that the trial judge erred by restricting his trial counsel's cross-examination of Burkhart. We disagree.

Defendant's trial counsel attempted to cross-examine Burkhart about exactly where he stopped defendant's car. According to defendant, Burkhart lied or perjured himself when testifying that defendant's car hit a curb before stopping. Review of Burkhart's testimony shows that the alleged inconsistencies do not rise to the level of perjury. The trial judge allowed defendant's trial counsel to bring out these inconsistencies on cross-examination. Defendant was not denied a reasonable opportunity to test the truth of Burkhart's testimony. *People v Hackett*, 421 Mich 338, 347; 365 NW2d 120 (1984). The trial judge did not abuse his discretion by controlling the scope of cross-examination. *People v Lucas*, 188 Mich App 554, 572; 470 NW2d 460 (1991).

III.

Defendant asserts that the prosecutor engaged in misconduct by failing to reveal Burkhart's alleged perjury, by lying to the court, and by impermissibly bolstering Burkhart's testimony. We find no misconduct.

As previously noted, the alleged inconsistencies in Burkhart's testimony do not constitute perjury. The prosecutor did not solicit false testimony from Burkhart or allow false testimony to stand uncorrected. *People v Canter*, 197 Mich App 550, 568; 496 NW2d 336 (1992). The complained-of rebuttal remarks were made in response to defense counsel's arguments, and did not rise to the level of prosecutorial misconduct. *People v Lawton*, 196 Mich App 341, 353; 492 NW2d 810 (1992).

IV.

Finally, defendant contends that the prosecutor's closing remarks improperly shifted the burden of proof onto defendant. Defense counsel did not object to these remarks at trial. A timely cautionary instruction could have cured any prejudicial effect due to the complained-of remarks, and no miscarriage of justice resulted from these remarks. Accordingly, this issue has not been preserved and will not be considered on appeal. *People v Duncan*, 402 Mich 1, 15-16; 260 NW2d 58 (1977).

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Henry William Saad

/s/ Carole F. Youngblood