STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SCOTT T. POLZIN,

Defendant-Appellant.

UNPUBLISHED
May 30, 1997

No. 193164
Menominee Circuit Court
LC No. 95-002068-FH

Before: O'Connell, P.J., and Sawyer and Markman, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction by jury for delivery of marijuana, MCL 333.7401(2)(c); MSA 14.15(7401)(2)(c). Defendant was accused of selling seven grams of marijuana to a state informant while in his truck.[1] He was sentenced to two months in jail and twenty-four months probation. We affirm.

Defendant argues that the trial court erred in denying defendant's motion for a new trial because of allegedly prejudicial statements made by the chief of police and the prosecutor regarding the civil forfeiture action. We disagree. The trial court did not abuse its discretion by denying the motion for a new trial because defendant was not denied a fair and impartial trial as a result of the challenged remarks. MCR 6.431(B); *Beasley v Washington*, 169 Mich App 650, 655; 427 NW2d 177 (1988). The chief of police's unresponsive answer, which revealed that he wanted the drug purchase to take place inside defendant's truck, was not prejudicial to defendant. See *People v Lumsden*, 168 Mich App 286, 298; 423 NW2d 645 (1988). His subsequent explanation that his reason for desiring this venue was his department's interest in forfeiture of the truck was only elicited upon further questioning by defense counsel. Further, there was no insinuation that the civil forfeiture was motivated by prior bad acts of defendant and the chief's subsequent testimony clarified that civil forfeitures were used to fund continued narcotics investigations. Although the trial court did not explicitly address a later rebuttal statement by the prosecutor regarding civil forfeiture, the statement was not improper because it was made in response to defense counsel's attempt to use the civil forfeiture motivation to portray the police officers as being unreasonable or vindictive toward defendant. See *People v Simon*, 174 Mich App 649, 655; 436 NW2d 695 (1989).

Defendant also argues that the trial court abused its discretion in denying defendant's motion for a new trial because of newly discovered evidence post-trial that allegedly established that the state informant was lying and contrived the case against defendant.[2] We disagree. The trial court dismissed the written statement that defendant attributed to the state informant as hearsay, but did not otherwise analyze this issue. However, the alleged newly discovered evidence, even if admissible, would not justify a new trial because it was cumulative, *People v Miller (After Remand*), 211 Mich App 30, 46; 535 NW2d 518 (1995), and would be used merely for additional impeachment of the state informant who was already extensively impeached at trial. See *People v Sharbnow*, 174 Mich App 94, 104; 435 NW2d 772 (1989). Nor would the result at trial likely have been altered given the strong corroborating testimony of the police officers and the vagueness of the alleged newly discovered evidence. *Miller*, *supra* at 46-7.

Affirmed.

/s/ Peter D. O'Connell
/s/ David H. Sawyer
/s/ Stephen J. Markman

[1] The truck was the subject of a civil forfeiture action pending before the same trial court.

[2] The informant, in the context of another case, indicated that he had lied and stated further, "I'm not talking about whether the other cases are good or bad."