

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TONY GAINES,

Defendant-Appellant.

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UNPUBLISHED  
September 2, 1997

No. 188352  
St. Clair Circuit Court  
LC No. 94-002993-FH

Before: Murphy, P.J., and Kelly and Gribbs, JJ.

PER CURIAM.

Defendant was convicted by a jury of two counts of second-degree home invasion, MCL 750.110a(3); MSA 28.305(a), and one count of failure to stop, MCL 257.602a; MSA 9.2302(1). Defendant was sentenced as an habitual offender-fourth, MCL 769.12; MSA 28.1083, to concurrent terms of fifteen to forty years. We affirm and remand for correction of the judgment of sentence.

There is no merit to defendant's claim that reversal is required because of the prosecutor's question to a witness concerning her religious beliefs. The prosecutor was apparently attempting to elicit information about why the witness was looking in her rearview mirror when she asked if the witness had "a lot of religious medals", and was not trying to learn the witness' opinion of religion. However, even assuming arguendo that the prosecutor's question was inappropriate, we conclude that any error was harmless in this case. As a member of this panel noted in the dissenting opinion in *People v Wells*, 82 Mich App 543, 547-548; 267 NW2d 448 (1978), there is no such thing as a perfect trial. In this case, there is no reasonable dispute about the witness' testimony that defendant parked in her driveway and went to her porch, or that the witness wrote down defendant's license number while he was there. Here, where the witness' testimony was undisputed and there was no issue of credibility to be affected by injection of religious matters, we find no risk of improper prejudice from the prosecutor's inartful questioning and conclude that any error was harmless. Compare *People v Burton*, 401 Mich 415, 416-418; 258 NW2d 58 (1977).

Defendant also argues that the trial court abused its discretion by endorsing a witness after trial had begun. We do not agree. Here, there was "no cognizable prejudice to defendant in allowing

endorsement, excluding the testimony”, *People v Burwick*, 450 Mich 281, 297; 218 NW2d 813 (1995), and we find no abuse of discretion.

Defendant contends that reversal is required because of prosecutorial misconduct. Although defendant argues generally that the prosecutor’s improper conduct can be seen from the transcript, defendant notes only the alleged injection of religion as error. We have already determined that any error in that regard was harmless. To the extent that defendant intends to argue that the prosecutor committed other misconduct, he has not properly preserved such claims because he has neither specified the conduct at issue nor argued the merits of his claim. *People v Kent*, 194 Mich App 206, 210; 486 NW2d 110 (1992).

Defendant argues that he was denied the effective assistance of counsel. There is no merit to this claim. Counsel was not ineffective for failing to object to the prosecutor’s injection of an alleged religious issue because there is no reasonable probability that the failure to object impacted the result of the trial. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). Nor was counsel ineffective for failing to request a jury instruction on the lesser offense of receiving and concealing stolen property. Because the jury was not instructed on receiving and concealing in this case, the jury would have acquitted defendant outright if it had not found the elements of home invasion.

There is no merit to defendant’s claim that there was insufficient evidence to support his convictions. There was ample evidence that a breaking and entering occurred in complainants’ occupied dwellings, and that defendant failed to stop when signaled by police. A witness testified that defendant and his car were in the neighborhood where the crimes occurred on the morning of the incidents. Defendant’s license plate number was turned over to police by the witness. When a patrolling police officer later activated his emergency equipment and attempted to stop defendant for speeding, defendant pulled over, jumped out of the car and fled on foot. Articles later determined to have been stolen from complainants were found on defendant’s person and in his car. Viewing the evidence in a light most favorable to the prosecution, we conclude that a rational factfinder could have found that the essential elements of the crimes were proved beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), modified in part on other grounds, 441 Mich 1201 (1992).

Because we reject defendant’s claims of error, we also find meritless defendant’s contention that the cumulative effect of errors in this matter require reversal.

Finally, defendant argues that he is entitled to resentencing or modification of his sentence. In light of defendant’s extensive prior record and the circumstances surrounding the offenses and the offender, we do not find defendant’s sentences in this case disproportionate. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). However, we agree that modification of the judgment of sentence is necessary. Because defendant was on parole from a sentence for a previous offense when the instant crimes were committed, the trial court ordered defendant’s sentences here to be served consecutively to the maximum terms imposed for the previous offense. See MCL 768.7a(2); MSA 28.1030(1)(2). Although the trial court did not have the benefit of our Supreme Court’s decision in *Wayne County Prosecutor v Dep’t of Corrections*, 451 Mich 569, 579-581; 548 NW2d 900 (1996), defendant is

not required to serve the maximum terms on his earlier convictions before beginning to serve his sentences in this case. Accordingly, this matter is remanded for clerical correction of defendant's judgment of sentence to reflect that defendant's sentences in this case are consecutive to the other matter, but without the restriction that he must complete the maximum terms on his prior sentences before the sentences in this case begin.

Affirmed. Remanded for clerical correction. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ Michael J. Kelly

/s/ Roman S. Gibbs