STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNEDY CRAIG CLEVELAND,

Defendant-Appellant.

UNPUBLISHED
June 6, 1997

No. 185756
Saginaw Circuit Court
LC No. 93-008151-FC

Before: Neff, P.J., and Wahls and Taylor, JJ.

PER CURIAM.

Defendant was convicted of armed robbery, MCL 750.529; MSA 28.797, possession of a short-barreled shotgun, MCL 750.224b; MSA 28.421(2), carrying a concealed weapon, MCL 750.227; MSA 28.424, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant pleaded guilty to habitual offender, third offense, MCL 769.11; MSA 28.1083. Defendant was sentenced to concurrent terms of twenty to forty years' imprisonment for armed robbery, and five to ten years' imprisonment for each of the short-barreled shotgun and concealed weapon convictions. Those sentences were imposed to run consecutively to the mandatory two years' imprisonment for felony-firearm and also consecutively to the sentence defendant was already serving. Defendant appeals as of right. We affirm.

Defendant argues that the trial court erred in refusing to dismiss his case on speedy trial grounds. We disagree. Defendant's delay in raising this claim until just a few days before the start of the second trial is weighed against him. *People v Wickham*, 200 Mich App 106, 112; 503 NW2d 701 (1993); *People v Metzler*, 193 Mich App 541, 546; 484 NW2d 695 (1992); *People v Lewandowski*, 102 Mich App 358, 366; 301 NW2d 860 (1980). In addition, defendant has not shown that he suffered any prejudice to his defense as a result of the delay. *People v Simpson*, 207 Mich App 560, 563-564; 526 NW2d 33 (1994).

The trial court did not abuse its discretion when it refused to strike the testimony of defendant's parole officer. *People v Taylor*, 195 Mich App 57, 60; 489 NW2d 99 (1992). The officer did not

violate the trial court's directions not to discuss defendant's parole status when he mentioned the word "parole" in answering a question posed by defense counsel. The question placed the officer in an awkward position and he used that word to answer the question correctly. Moreover, the use of the word "parole" only that one time in a six-day trial was harmless beyond a reasonable doubt.

Defendant raises two instances of prosecutorial misconduct to which he did not object below. This Court is not persuaded that a miscarriage of justice will result from our failure to review the alleged prosecutorial misconduct. *People v Allen*, 201 Mich App 98, 104; 505 NW2d 869 (1993).

Defendant argues that his right to remain silent and his right to counsel were denied when he was arrested for a parole violation. Defendant spontaneously stated, "I did it. I'm guilty." His parole officer asked him "Guilty of what?" Defendant then admitted the armed robbery. Defendant waived his previously invoked right to counsel when he initiated conversation with the parole officer. *People v Krause*, 206 Mich App 421, 424; 522 NW2d 667 (1994). The officer's question was merely a clarifying question which did not necessitate giving defendant the warnings pursuant to *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966). Such a question was not "interrogation." *Butzin v Wood*, 886 F2d 1016, 1018 (CA 8, 1989); *United States v Rhodes*, 779 F2d 1019, 1032 (CA 4 1985).

Defendant asserts that the trial court erred in denying his motion to suppress evidence seized from the trunk of his car which had been stored in the garage of his girlfriend's mother. We disagree. The search occurred on the same day that defendant was arrested as a parole absconder. Therefore, the parole officer who conducted the search had a reasonable suspicion that defendant had violated the terms of his parole. *People v Woods*, 211 Mich App 314; 535 NW2d 259 (1995). The trial court apparently based its ruling that the search was proper on 1979 ACR 791.7735(2) A review of the record supports the trial court's decision.

Finally, defendant argues that he was denied a fair trial when the prosecutor excused two of three African-American jurors allegedly with discriminatory intent. The trial court properly found that the prosecutor had race neutral reasons for the peremptory challenges. As the prosecutor noted, one of the potential jurors mentioned the Rodney King case and his distrust of police officers even though he said that he could put it aside. Because the prosecutor and the trial court were in a superior position to assess the demeanor of this potential juror, we decline to hold that the trial court erred in finding that the prosecutor's dismissal of this juror was race neutral. *People v Barker*, 179 Mich App 702, 707; 446 NW2d 549 (1989). The prosecutor excused the second African-American juror because of her four-year-old felony conviction and her ten-year-old misdemeanor conviction. Those reasons are clearly race neutral.

Affirmed.

/s/ Janet T. Neff
/s/ Myron H. Wahls
/s/ Clifford W. Taylor