

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC DESHAUN MUNSON,

Defendant-Appellant.

UNPUBLISHED

October 3, 1997

No. 190610

Oakland Circuit Court

LC No. 94-134265

Before: Cavanagh, P.J., and Reilly and White, JJ.

PER CURIAM.

Defendant was charged with possession with intent to deliver less than 50 grams of cocaine, second offense, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and felon in possession of a firearm, MCL 750.224f; MSA 28.421(6). A jury convicted defendant of possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), felony-firearm, and felon-in-possession. The trial court imposed an enhanced sentence of three to eight years' imprisonment on the drug charge pursuant to MCL 333.7413(2); MSA 14.15(7413)(2), and sentenced defendant to two years' imprisonment for the felony-firearm conviction and three to five years' imprisonment for the felon-in-possession conviction. The felon-in-possession conviction was vacated and a three to ten year sentence for habitual offender, third offense was imposed. The habitual and controlled substance sentences are concurrent to one another and consecutive to the felony firearm sentence. We affirm.

Defendant first argues that the prosecution failed to prove his guilt beyond a reasonable doubt because the evidence at trial supported defendant's theory that he was framed. We disagree. At trial, two police officers testified that they recovered the gun and the pill bottle containing cocaine from defendant. Several other officers contradicted defendant's assertion that he was downstairs during the raid. Further, although the prosecutor did not produce the cocaine at trial, it presented evidence that established the chain of custody of the drugs from the officer that seized the drugs from defendant to an expert at the state police crime lab. It was for the jury to determine whether it believed the officers'

version of the events or defendant's claims that he had been framed. *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990).

Next, defendant argues that the prosecution improperly shifted the burden of proving that the substance was in fact cocaine to him when it referred to a stipulation entered into at the preliminary examination that the substance was cocaine. We decline to review this issue because defendant did not base his objection at trial on this ground. *People v Nantelle*, 215 Mich App 77, 86-87; 544 NW2d 667 (1996). Further, we note this evidence was introduced in response to defendant's claim that the defense was never afforded an opportunity to examine the substance. Moreover, the jury was properly instructed on the burden of proof. Therefore, defendant was not denied a fair trial. *People v McElhaney*, 215 Mich App 269, 283; 545 NW2d 18 (1996).

Defendant further argues that the trial court erred when it admitted an assault weapon into evidence which was not the weapon involved in defendant's two weapons charges, and was thus irrelevant. Although the weapon was not relevant to the charges, we conclude that the error was harmless because even if the weapon had been excluded, it was unlikely that the jury would have acquitted defendant in light of the evidence against him. *People v Burnett*, 166 Mich App 741, 752; 421 NW2d 278 (1988).

Finally, defendant argues that he is entitled to have references to charges against him which resulted in an acquittal and a dismissal stricken from the presentence investigation report, to be resentenced on the basis of a corrected report, and to have a corrected copy of the report forwarded to the Department of Corrections.

Defendant does not dispute that the challenged information is accurate. Rather, he argues that the charges are listed in the PSIR's "Previous Criminal Record" section, and that "[o]ne who happened to merely glance at the references . . . would likely assume that Mr. Munson was convicted of the challenged charges," and that that information could have an adverse effect on defendant's status with the DOC. We note that the trial court listened to defense counsel's arguments and stated that it understood that the challenged matters were not convictions. Defendant's claim is without merit.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Maureen Pulte Reilly
/s/ Helene N. White