

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GERALD WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

August 4, 1998

No. 200282

Kent Circuit Court

LC No. 96-006781 FH

Before: Murphy, P.J., and Young, Jr. and M. R. Smith*, JJ.

MEMORANDUM.

Defendant was convicted of unarmed robbery, MCL 750.530; MSA 28.798, and sentenced to an enhanced term of imprisonment of six to thirty years, reflecting his status as a third offender, MCL 769.11; MSA 28.1083. Defendant appeals as of right. We affirm.

The trial court abused its discretion when it admitted evidence that the victim had passed a drug screening performed a month after the unarmed robbery giving rise to defendant's conviction, where the evidence had no probative force with regard to either the credibility of the victim or the defendant¹ MRE 401; *People v Mills*, 450 Mich 61, 66-68, 72; 537 NW2d 909 (1995), modified 450 Mich 1212 (1995). Nevertheless, the error was harmless in light of the admission of the videotape from the store's security camera which confirmed the victim's testimony that defendant forced his way into the closed store and removed items from the store's shelves. *People v Sabin*, 223 Mich App 530, 539-541; 566 NW2d 677 (1997).

Limiting our review to the record facts, *People v Hedelsky*, 162 Mich App 382, 397; 412 NW2d 746 (1987), defendant has failed to demonstrate that he was deprived of the effective assistance of trial counsel. *People v Mitchell*, 454 Mich 145, 156; 560 NW2d 600 (1997); *People v Messenger*, 221 Mich App 171, 181; 561 NW2d 463 (1997).

Defendant has failed to preserve for appellate review most of his claims of prosecutorial misconduct. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). No miscarriage of

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

justice will result. *Id.* The claims of misconduct are either unsupported by the record, *People v Fields*, 450 Mich 94, 115; 538 NW2d 356 (1995); *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995); *People v Launsbury*, 217 Mich App 358, 361; 551 NW2d 460 (1996); *People v Ullah*, 216 Mich App 669, 678; 550 NW2d 568 (1996); *People v Johnson*, 187 Mich App 621, 626; 468 NW2d 307 (1991), or, where supported, amount to harmless error, *Sabin*, 223 Mich App 539-541; *People v Nelson*, 86 Mich App 651, 653; 273 NW2d 512 (1978).

To the extent that defendant raises claims of instructional error, we decline to review the merits of those claims because they are not set forth in the statement of the questions presented. *City of Lansing v Hartsuff*, 213 Mich App 338, 351; 539 NW2d 781 (1995).

Affirmed.

/s/ Robert P. Young, Jr.

/s/ Michael R. Smith

I concur in result only.

/s/ William B. Murphy

¹ Even if defendant were correct, and error warranting reversal occurred, a new trial would not be warranted. Rather, by defendant's own testimony, he conspired with the "victim" to commit, and committed, embezzlement, for which a remand for sentencing on that offense, as enhanced, would be an appropriate option to offer the prosecutor. *People v Kyllonen*, 402 Mich 135, 149 n 15; 262 NW2d 2 (1978).