

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFREY DARROLD BONESTEEL,

Defendant-Appellant.

UNPUBLISHED

September 28, 1999

No. 208334

Lapeer Circuit Court

LC No. 97-006096 FC

Before: Whitbeck, P.J., and Saad and Hoekstra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of conspiracy to commit armed robbery, MCL 750.529; MSA 28.797 and MCL 750.157a; MSA 28.354(1). Defendant was sentenced as a second habitual offender, MCL 769.10; MSA 28.1082, to serve fifteen to thirty years in prison. Defendant appeals as of right and we affirm.

Defendant first argues that he was deprived of his due process rights when the court allowed an accomplice, Leonard Gordon, to testify that he pleaded guilty to conspiracy to commit armed robbery. We disagree. The decision whether to admit evidence is within the discretion of the trial court and will not be disturbed on appeal absent a clear abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). Generally, evidence of an accomplice's plea agreement may be properly admitted by the prosecution. *People v Standifer*, 425 Mich 543 556; 390 NW2d 632 (1986). Here, defendant never objected to this testimony at trial. Indeed, in this case, defendant cross-examined the accomplice witness about his plea agreement, apparently choosing to discuss it in an attempt to undermine Gordon's credibility. Based on these facts, we find that the trial court did not abuse its discretion in allowing Gordon to testify. See *People v Dowdy*, 211 Mich App 562, 571; 536 NW2d 794 (1995).

Defendant next argues that he was denied his right to due process when a police officer made an allegedly improper comment regarding defendant's right to remain silent. Although defendant did not object to the testimony below, review is appropriate where the issue presents a significant constitutional question. *People v Gilbert*, 183 Mich App 741, 746-747; 455 NW2d 731 (1990). We conclude that no improper comment on defendant's right to remain silent was made.

At trial, the police officer testified that "[a]fter the interview with . . . Gordon, [defendant] was transported back to the post. At that time I interviewed him, after *Miranda*, he advised he did not want to give me a statement. The interview was terminated." Defendant argues that this statement was the equivalent of an improper comment on his right to remain silent. We disagree. The officer's unresponsive answer to a general question is not a sufficient basis on which to conclude that the prosecutor was attempting to introduce prohibited testimony. See *People v Sain*, 407 Mich 412, 415; 285 NW2d 772 (1979). Defendant has not shown that the prosecutor in this case seized "upon the response of the police officer and used it to maximum advantage." *Id.* at 416. The prosecutor never mentioned or referred to defendant's failure to make a statement for the remainder of the trial. Consequently, we find that defendant's right to due process was not offended by the officer's comment.

Finally, defendant argues that he was denied his right to due process when the trial court refused to give an instruction on assault and battery as a lesser included misdemeanor offense. The trial court enjoys substantial discretion when deciding whether to give lesser included misdemeanor instructions and will not be reversed on appeal absent an abuse of that discretion. *People v Steele*, 429 Mich 13, 22; 412 NW2d 206 (1987). A court must instruct on a lesser included misdemeanor where (1) there is a proper request, (2) there is an "inherent relationship" between the greater and lesser offense, (3) the requested misdemeanor is supported by a "rational view" of the evidence, (4) the defendant has adequate notice, and (5) no undue confusion or other injustice would result. *People v Corbiere*, 220 Mich App 260, 262-263; 559 NW2d 666 (1996), citing *People v Stephens*, 416 Mich 252, 261-265; 330 NW2d 675 (1982).

Here, defendant has failed to show that there is an inherent relationship between the greater offense, conspiracy to commit armed robbery, and the lesser offense, assault and battery. The trial court instructed the jury to decide whether defendant was guilty of conspiracy to commit armed robbery. We are unable to discern any inherent relationship between a conspiracy charge and the misdemeanor of assault and battery, and defendant offers no support or authority for finding such a relationship between the two crimes. An appellant may not merely announce his position and leave it to this Court to seek authority to sustain or reject it. *In re Keifer*, 159 Mich App 288, 294; 406 NW2d 217 (1987). Consequently, we see no basis for finding that the trial court abused its discretion in refusing to instruct on the lesser offense.

Affirmed.

/s/ William C. Whitbeck
/s/ Henry William Saad
/s/ Joel P. Hoekstra