

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CURTIS G. WOOD,

Defendant-Appellant.

UNPUBLISHED

February 6, 2001

No. 213417

Wayne Circuit Court

LC No. 97-009781

Before: Smolenski, P.J., and Doctoroff and Wilder, JJ.

PER CURIAM.

Following a jury trial, defendant appeals as of right from his convictions for possession with intent to deliver over 650 grams of cocaine, MCL 333.7401(2)(a)(1); MSA 14.15(7401)(2)(a)(i), and fourth-degree fleeing and eluding, MCL 750.479a(2); MSA 28.747(1)(2). Defendant was sentenced to life imprisonment for the possession with intent to deliver conviction and one to two years' imprisonment for the fourth-degree fleeing and eluding conviction. We affirm.

On November 13, 1997, between 8:00 and 8:30 a.m., Officer Tardiff saw a 1997 Toyota Camry traveling at a high rate of speed on Outer Drive. Officer Tardiff stopped the vehicle and asked to see a driver's license, registration, and proof of insurance. Defendant, who was driving the vehicle, said that he did not have a license, but that he would provide his name. As Officer Tardiff was speaking with defendant, he smelled burnt marijuana coming from the vehicle and he asked defendant if he had been smoking marijuana. Defendant replied that he had smoked a joint earlier. Officer Tardiff asked defendant to have a seat in the patrol car, to which defendant replied, "I don't think so." Defendant placed the car in gear and drove off at a high rate of speed. Officer Tardiff pursued the vehicle to Fourteenth Street, where defendant pulled the vehicle to the left shoulder of the road, jumped out of the vehicle, and ran on foot. Officer Tardiff noticed that defendant had plastic baggies containing an off-white substance in his hand. Five bags of cocaine and loose pieces of rock cocaine were recovered from the area following defendant's apprehension.

Defendant argues that the trial court erred in admitting evidence that the vehicle driven by defendant was involved in a prior drug transaction because the testimony was irrelevant and unfairly prejudicial. We note that, at trial, defendant objected to the challenged testimony on

hearsay grounds. “An objection based on one ground at trial is insufficient to preserve an appellate attack based on a different ground.” *People v Asevedo*, 217 Mich App 393, 398; 551 NW2d 478 (1996). See MRE 103(a)(1). This Court may consider evidentiary issues not properly preserved if manifest injustice would result from failure to consider the issue. *People v Cain*, 238 Mich App 95, 115; 605 NW2d 28 (1999).

After reviewing the record, we conclude that manifest injustice will not result from this Court’s failure to consider the issue. Lieutenant Shaw testified that the day following defendant’s arrest, he went to confiscate the vehicle defendant had been driving at the time of the incident. The prosecutor questioned why Lieutenant Shaw had been looking for the vehicle, to which Shaw responded that he was going to seize the vehicle for forfeiture because defendant was driving it when arrested for possession of drugs. Lieutenant Shaw then indicated that the car, which was owned by a third person, had been seized on a prior occasion after being used during another narcotics transaction. Contrary to defendant’s contention, no testimony was introduced that defendant was involved in the prior narcotics transaction. Further, the evidence consistently established that the vehicle was not owned by defendant, and that he borrowed the car from a friend for the first time the day before this incident. On this record, we are not convinced that Lieutenant Shaw’s testimony concerning the vehicle’s involvement in a prior narcotics transaction had a prejudicial or improper influence on the verdict. Accordingly, we find no manifest injustice.

Defendant also argues that a question posed to Lieutenant Shaw inquiring whether defendant was involved in a prior drug deal placed improper character evidence before the jury because the question implied an answer. We disagree. Defense counsel objected to the prosecution’s question before Lieutenant Shaw responded and, in response to the objection, the prosecution then asked a different question. Thus, Lieutenant Shaw never responded to the question regarding defendant’s involvement in another narcotics transaction. Further, the trial court instructed the jury that the attorneys’ questions and arguments were not evidence and only the witnesses’ answers were to be considered during deliberations. Jurors are presumed to follow the instructions given. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). We find no evidentiary error.

Next, defendant raises several claims of instructional error, arguing that the jury instructions failed to adequately instruct the jury on the law that was to be applied during deliberations. We disagree. Jury instructions are reviewed in their entirety to determine whether error requiring reversal exists. *People v Mass*, 238 Mich App 333, 339; 605 NW2d 322 (1999), lv gtd ___ Mich ___ (6/30/2000). The instructions must include all the elements of the charged offense and must not exclude material issues, defenses, and theories if there is evidence to support them. *People v Daniel*, 207 Mich App 47, 53; 523 NW2d 830 (1994). Even if somewhat imperfect, there is no error if the instructions fairly presented the issues to be tried and sufficiently protected defendant’s rights. *Mass, supra* at 339.

Defendant first contends that the trial court’s instruction on the presumption of innocence inappropriately stressed the rebuttable nature of the presumption of innocence and that the

instructions given on the presumption of innocence and burden of proof did not include the appropriate language from CJI2d 3.2.¹ We disagree.

The trial court instructed the jury as follows on the presumption of innocence:

Now, in a jury case you decide the issues of facts. The Court gave you instructions at the beginning of the trial, and I'll go over that briefly again.

One is that in a criminal case the People have the burden of showing you that the crime alleged was in fact committed. And they have the burden of proving to you that the defendant is the person who committed the crime.

The defendant has no burden. All he has to do is show up in court and sit at the table.

In this case, however, he has testified. But the burden never shifts. He becomes a witness the same as anyone else. The burden is always on the people.

They have to prove to you, again, the crimes were committed and the defendant is the person that committed the offense[s].

Now, any person who is accused of an offense is presumed innocent. Presumption of innocence starts at the beginning of the trial, and it even goes with you when you are in the jury room deliberating.

¹ CJI2d 3.2 provides:

(1) A person accused of a crime is presumed to be innocent. This means that you start with the presumption that the defendant is innocent. This presumption continues throughout the trial and entitles the defendant to a verdict of not guilty unless you are satisfied beyond a reasonable doubt that [he/she] is guilty.

(2) Every crime is made up of parts called elements. The prosecutor must prove each element of the crime beyond a reasonable doubt. The defendant is not required to prove [his/her] innocence or to do anything. If you find that the prosecutor has not proven every element beyond a reasonable doubt, than you must find the defendant not guilty.

(3) A reasonable doubt is a fair, honest doubt growing out of the evidence or lack of evidence. It is not merely an imaginary or possible doubt, but a doubt based on reason and common sense. A reasonable doubt is just that - a doubt that is reasonable, after a careful and considered examination of the facts and circumstances of this case.

The presumption of innocence, however, is a rebuttal [sic] presumption. That means it will stand, unless it is rebutted by competent evidence to the contrary.

If you find that the People have proven the crimes were committed and the defendant committed the offense, then the presumption of innocence no longer applies, and it would be your duty to find him guilty.

If, on the other hand, you make no such finding, and you don't find that the People have rebutted that presumption, it is your duty to bring back a verdict of not guilty.

But again, presumption of innocence stands only unless it is rebutted by evidence to the contrary.

The trial court then instructed the jury on the burden of proof as follows:

Now, there is one standard of proof, and that is proof beyond a reasonable doubt. It is not proof beyond a shadow of a doubt, because the only time you hear that is on television, or something that originated in the minds of fiction writers.

It's reasonable doubt. And that is a doubt that's based on reason and common sense. In other words, you bring your everyday knowledge and experience with you into the jury room, and you apply that to the evidence.

Now, reasonable doubt is a doubt that's based on reason and common sense. A fair, honest and reasonable doubt. A doubt that you should have a reason for having.

Now, a reasonable doubt is not a flimsy, or vain, or imaginary or fictitious or copious doubt. It's a fair, honest, and reasonable doubt.

A reasonable doubt is not a hunch, or a feeling, or a possibility of innocence. It is a doubt that's based on the evidence or lack of evidence.

If you can say that you have an abiding conviction to a moral certainty, you should then bring back a verdict of guilty.

If you do not have an abiding conviction to a moral certainty, it is your duty to bring back a verdict of not guilty.

Additionally, when explaining the elements of the offense of possession with intent to deliver over 650 grams of cocaine, the trial court again instructed the jury that "there are certain elements which the People have to prove to you beyond a reasonable doubt."

While the jury instructions were not a verbatim recitation of CJI2d 3.2, the instructions were substantially similar to the standard Criminal Jury Instructions on the presumption of innocence and burden of proof. See *People v Peach*, 174 Mich App 419, 430; 437 NW2d 9

(1989); *People v Alderete*, 132 Mich App 351, 356; 347 NW2d 229 (1984). Reviewing the instructions in their entirety, we conclude that the trial court's instructions fairly presented the presumption of innocence and burden of proof to the jury and sufficiently protected defendant's rights. *Mass, supra*.

Defendant next contends that the trial court's instruction on witness credibility unfairly directed the jury's attention to the credibility of the defense witnesses to a greater extent than the prosecution witnesses and failed to specifically instruct the jury that bias, prejudice, and personal interest could be considered in determining the credibility of witnesses. We disagree. The trial court instructed the jury on the issue of credibility as follows:

Now, the issue of credibility is for you to decide. Credibility simply means believability. So you decide whether you wish to believe anyone or not.

There are things that you may take into consideration to help you to decide whether you wish to believe a witness.

First of all, the witnesses testified right here in court, under oath and in your presence. So you had an opportunity to observe their demeanor as they testified.

So, you may take into consideration their demeanor. You may take into consideration whether a witness was forthright. Whether he was giving answers or whether he was looking for answers, take that into consideration.

Also consider whether or not the witness' testimony is corroborated. That is, whether it's supported by any direct or circumstantial evidence that you have heard in the case.

Also consider, well what does a witness have to gain from his testimony? Does he have an interest in the outcome of the case? I mean, why would a witness come in here to testify the way they did? What's the point? What's he got to gain from his testimony?

Also consider whether or not any witness who testified is a friend or relative of any of the parties in the case.

Consider whether or not any witness' testimony has been impeached by a prior inconsistent statement. That is, whether or not the witness said something that was different from what was said outside of court.

And again, if so, look at whether the statement that is inconsistent was merely of detail, or whether it was something that is substantial.

Now, when you are weighing the testimony of the witnesses, you do it all the same. You look at it, you consider it and you examine it, and you apply the same test I have given you to the testimony of all the witnesses.

Police witnesses are to be scrutinized the same as anyone else. The defendant is supposed to be scrutinized the same as anyone else. The medical testimony and the – I’m sorry, not the medical – the chemical testimony, fingerprint experts, all of that testimony is to be scanned and examined the same as you would the testimony of any other witness.

If you believe any witness has not testified truthfully, you may disregard all of his testimony, or you may disregard that part that you believe to be untrue, and accept the part which you believe to be true.

Again, the question of credibility is your job. You decide whether you wish to believe a witness or not. Again, consider the witness’ demeanor. Whether or not the witness has an interest in the outcome of the case. Whether the witness’ testimony is corroborated by any of the other evidence that you have heard in the case.

We find that this instruction did not unfairly direct the jury’s attention to the credibility of the defense witnesses to a greater extent than the prosecution witnesses; nor did the instruction fail to instruct the jury that bias, prejudice, and personal interest could be considered in determining the credibility of witnesses. While the instruction was not a verbatim recitation of the portion of CJI2d 3.6, referring to bias, prejudice or personal interest of a witness, viewed in its entirety, the instruction fairly presented the issue of witness credibility to the jury and sufficiently protected defendant’s rights. *Mass, supra*.

Defendant also claims that the trial court failed to give an instruction on time, place and venue of the crime, similar to CJI2d 3.10.² Although defendant correctly notes that the trial court did not give the requested instruction, the absence of the instruction did not result in error because the instructions, as a whole, did not exclude material issues. *Daniel, supra* at 53. The date, time, and location of the crime were not contested in this case and were therefore not material to the jury’s verdict. The jury instructions in their entirety fairly presented the issues to be tried and sufficiently protected defendant’s rights. *Mass, supra*.

Defendant further argues that the trial court failed to give the requested instruction on deliberations and verdict consistent with CJI2d 3.11. Specifically, defendant claims that the trial court’s instruction failed to inform the jury of the “give and take inherent within the decision[-]making process” or instruct the jurors not to change their honest opinions in order to reach a verdict. Defendant correctly notes that the trial court did not instruct the jury in accordance with that portion of CJI2d 3.11; however, we conclude that such omission does not require reversal.

The trial court instructed the jury as follows:

Now, your verdict must be unanimous. That is 12 people must decide the case. You do not have to be consistent as to the counts. So you may find the

² CJI2d 3.10 states that “[t]he evidence must convince you beyond a reasonable doubt that the crime occurred on or about _____, within _____ [County / the city of Detroit].”

defendant guilty of both counts, or guilty of one and not guilty of the other. But you have to be unanimous.

In *People v Pollick*, 448 Mich 376, 379-380; 531 NW2d 159 (1995), the trial court instructed the jury that it had a duty to reach a unanimous verdict, but it did not instruct that a juror's honest belief should not be surrendered in order to reach a unanimous verdict. Nor was the jury instructed on how to proceed if the jurors could not agree. *Id.* at 380-381. This Court determined that the instruction substantially departed from the approved standard instruction and reversed defendant's conviction. *Id.* at 378-380. The Supreme Court concluded that an instruction regarding deliberations and verdict that deviated from CJI2d 3.11 did not require reversal unless it had an undue tendency to coerce a juror to defer to the decision of the majority for the sole purpose of reaching a verdict. *Id.* at 383-386, quoting *People v Hardin*, 421 Mich 296, 314-316; 365 NW2d 101 (1984). The Supreme Court reasoned that because the jury instruction preceded deliberations, it reduced the instruction's coercive potential and reversal was not warranted. *Id.* at 385.

Likewise, in the instant case, the challenged instruction occurred prior to the jury's deliberations. Although the instruction did not specifically advise the jurors not to sacrifice an honest belief in order to reach a unanimous verdict, or how to proceed if the jurors could not agree, the instruction did not imply a civic duty to reach a unanimous verdict or a failed purpose if a unanimous verdict was not reached. *Pollick, supra* at 382-385. Therefore, because the instruction did not have an undue tendency to coerce a juror to defer to the decision of the majority for the sole purpose of reaching a verdict, we conclude that the instruction was not improper and reversal is not warranted.

Defendant next contends that the trial court failed to give the requested instruction concerning impeachment of a prior inconsistent statement, consistent with CJI2d 4.5. Specifically, defendant claims that the trial court failed to instruct the jury that testimony given under oath subject to the penalty of perjury may be treated as substantive evidence. Defendant maintains that this instruction was significant due to preliminary examination testimony that the drugs were in defendant's left hand, which was contradicted by trial testimony that the drugs were in defendant's right hand. We disagree.

The record reveals that the trial court instructed the jury to consider "whether or not any witness' testimony has been impeached by a prior inconsistent statement . . . [t]hat is, whether or not the witness said something that was different from what was said outside of court." While the trial court did not give CJI2d 4.5 in its entirety, we are not convinced that the omitted portion of the instruction relating that the inconsistent statement could be treated as substantive evidence resulted in error requiring reversal. Defendant's theory at trial was that he did not possess the drugs that were recovered by the police. The testimony regarding whether the drugs were seen in defendant's right or left hand was not a fact that was a material issue in the case. The instructions, as a whole, did not exclude material issues, *Daniel, supra* at 53, and fairly protected defendant's rights. *Mass, supra*.

Next, defendant claims that the trial court failed to instruct the jury that the fingerprint matching defendant's fingerprint retrieved from the bag of cocaine must have been placed on the evidence when the crime was committed, consistent with CJI2d 4.15. We disagree.

The trial court instructed the jury as follows:

The other thing I'd like to bring to your attention is the evidence of fingerprints on one of the bags in this case.

In order to find that that is good evidence in this case, the People have to prove to you that the fingerprint was made by the defendant, and that it was made by the defendant at the place and at the time that the crime was committed.

This instruction, while not a verbatim recitation of CJI2d 4.15, properly informed that jury that defendant's fingerprint must have been found in the place or at the time of the offense. The instructions fairly presented the issue of fingerprint evidence to the jury and sufficiently protected defendant's rights. *Mass, supra*. We find no error.

Defendant's final claim of instructional error is that the trial court's instruction on the charge of fleeing and eluding did not include one of the elements of the offense, specifically, the element of defendant's knowledge. We disagree.

The trial court provided the following instruction on the offense of fleeing and eluding:

The second count in this case is Fleeing and Eluding the Police. You make a decision on that.

All the people have to prove there is that the police were in the performance of their duty and they tried to arrest the defendant. And that he fled from the police, *knowing that the police were out to arrest him*.

Now, there has been some evidence that the defendant tried to run away when the police tried to arrest him. This evidence does not prove guilt. A person may run or hide for innocent reasons, such as panic, mistake, or fear.

However a person may also run or hide because of a consciousness of guilt. You must decide whether the evidence is true. And if true, whether it shows that the defendant had a guilty state of mind. [Emphasis added.]

Later, pursuant to the prosecution's request, the trial court clarified the elements of fleeing and eluding:

Count 2 is Fleeing and Eluding the Police, The elements are that the defendant was driving a motor vehicle at the time. And that he was stopped by the police and that he fled from the police, who were lawfully stopping him for a traffic violation.

Contrary to defendant's contention, the trial court specifically instructed that the prosecution had to prove that defendant fled, knowing that the police were attempting to arrest him. Viewed in its entirety, the jury instruction on the elements of fleeing and eluding the police fairly presented the issue to be tried and sufficiently protected defendant's rights. *Mass, supra*. See generally *People v Grayer*, 235 Mich App 737, 739-742; 599 NW2d 527 (1999).

Defendant's next argument is that the trial court erred in denying his discovery motion requesting the personnel records of Officer Tardiff. We disagree. The trial court's ruling on a discovery motion is reviewed for an abuse of discretion. *People v Lemcool (After Remand)*, 445 Mich 491, 497; 518 NW2d 437 (1994); *People v Valeck*, 223 Mich App 48, 51; 566 NW2d 26 (1997). An abuse of discretion occurs when there is no justification for the trial court's ruling in light of the facts presented. *People v Laws*, 218 Mich App 447, 455; 554 NW2d 586 (1996).

The party seeking discovery bears the burden of establishing that the information is necessary for preparing a defense, in the interests of a fair trial, and not part of a fishing expedition. *People v Stanaway*, 446 Mich 643, 680; 521 NW2d 557 (1994), quoting *People v Maranian*, 359 Mich 361, 368; 102 NW2d 568 (1960). "Discovery should be granted where the information sought is necessary to a fair trial and a proper preparation of a defense." *Laws, supra* at 452. However, the discovery request should not be granted if the record reflects that the party seeking discovery is on a fishing expedition to see what may turn up. *Stanaway, supra* at 680.

After reviewing the record, we conclude that defendant failed to meet his burden of establishing that Officer Tardiff's personnel records were necessary for preparing his defense, in the interests of a fair trial, and not part of a fishing expedition. *Stanaway, supra*. Defendant contended that Officer Tardiff's employment with several police departments raised the distinct possibility of misconduct, but failed to provide any factual support for his contention that the personnel records would reveal misconduct. During the hearing on defendant's motion, defense counsel conceded that he did not know if misconduct was a reason for Officer Tardiff's changes in employers and acknowledged that the employment moves could have been due to other circumstances, such as better pay. Thus, we agree with the trial court's finding that defendant's argument that review of Officer Tardiff's personnel records was necessary to ascertain the reason for his changes in employers, was based on mere speculation. Accordingly, the trial court did not abuse its discretion in denying defendant's discovery request.

Next, defendant argues that the exhibits of cocaine were improperly introduced into evidence. To preserve an evidentiary issue for appeal, a timely and specific objection must be made in the trial court, and the ground for objection at trial must be asserted on appeal. MRE 103(a)(1); *People v Grant*, 445 Mich 535, 545-546, 553; 520 NW2d 123 (1994); *People v Barclay*, 208 Mich App 670, 673; 528 NW2d 842 (1995). Here, when the prosecution moved for admission of the cocaine, defense counsel stated that he had an objection to the admission of the evidence that he would present later. Defense counsel did not present a further objection to the admission of the cocaine. Because defendant failed to state a specific and timely objection to the admission of the cocaine, this issue was not properly preserved for appellate review. Accordingly, our review of this evidentiary issue is limited to avoiding manifest injustice. *Cain, supra* at 115.

A perfect chain of custody is not required for the admission of cocaine. *People v White*, 208 Mich App 126, 130, 133; 527 NW2d 34 (1994). Where it is established with a reasonable degree of certainty that the proffered evidence was not mistakenly exchanged, contaminated, or tampered with, the evidence is admissible. *Id.* at 133. Once a proper foundation has been established, any deficiencies in the chain of custody go to the weight afforded to the evidence

rather than to its admissibility. *Id.* We conclude, upon review of the record, that an adequate foundation for the evidence was laid and the cocaine was properly admitted. Any inconsistencies in the testimony concerning the chain of custody of the cocaine did not undermine the adequacy of the foundation that was laid for the admission of the exhibits. Accordingly, we find no manifest injustice.

Defendant next argues that he was denied a fair trial by the prosecutor's remark that defense counsel was trying to mislead the jury by hiding facts. We disagree. In reviewing claims of prosecutorial misconduct, this Court must examine the record and evaluate the challenged remarks in context to determine whether defendant was denied a fair and impartial trial. *People v Rice (On Remand)*, 235 Mich App 429, 435; 597 NW2d 843 (1999); *People v Paquette*, 214 Mich App 336, 342; 543 NW2d 342 (1995). A prosecutor's personal attack of defense counsel can infringe on the defendant's presumption of innocence. *People v Kennebrew*, 220 Mich App 601, 607; 560 NW2d 354 (1996).

After reviewing the challenged remarks in context, we are not convinced that the prosecutor's statement was a personal attack on defense counsel. The prosecutor did not state that defense counsel was attempting to hide the facts, but rather that the jobs of some people were to hide the facts. Although defense counsel's inference that the prosecutor's statement was directed at him is not unreasonable, the prosecutor's isolated remark was general in nature and not expressly directed at defense counsel. Cf., *People v Dalessandro*, 165 Mich App 569, 579-580; 419 NW2d 609 (1988); *People v Wise*, 134 Mich App 82, 100-101; 351 NW2d 255 (1984). In any event, the trial court cured any possible prejudice from the remark by instructing the jury that neither the attorneys' objections to evidence nor the jury's removal from the court room suggests that something is being hidden from the jury, rather, there were certain rules governing admissibility of evidence that needed to be reviewed. The trial court further instructed that statements and arguments made by the attorneys were not evidence and should not be considered during deliberations. Accordingly, we find no error.

Defendant's final argument is that the prosecutor engaged in misconduct by stating, during closing arguments, "[w]ho knows what else is in that car that we didn't get," referring to the vehicle defendant was driving at the time of his arrest. Defendant claims that the prosecutor's statement suggests that there was additional drugs in the vehicle at the time of his arrest and that such statement is not supported by the evidence in the record. We agree that the statement was improper inasmuch as it relied on facts not in evidence; however, in view of the trial court's immediate reprimand to the prosecution and the other evidence supporting defendant's guilt, we conclude that any error in the prosecutor's statement was harmless.

Prosecutors may not make a statement of fact to the jury that is unsupported by the evidence, but they are free to argue the evidence and all reasonable inferences arising from it as they relate to the theory of the case. *People v Schutte*, 240 Mich App 713, 721; ___ NW2d ___ (2000). Here, while there was evidence that the vehicle had been involved in a drug transaction prior to November 13, 1997, it was undisputed that the vehicle did not belong to defendant, but was the property of a third person, and that defendant borrowed the vehicle for the first time on November 12, 1997. Moreover, there was no record evidence establishing that there was additional drugs, or any other illicit substance, found in the vehicle at the time of defendant's

arrest. Thus, to the extent that the prosecutor's statement suggests that additional drugs may have been in the vehicle, this remark was improper.³

However, although improper, the prosecutor's misconduct does not require reversal of defendant's convictions. Reversal is not warranted unless it is more probable than not that the error decided the outcome of the case. *People v Lukity*, 460 Mich 484, 496; 596 NW2d 607 (1999); *People v Brownridge (On Remand)*, 237 Mich App 210, 216; 602 NW2d 584 (1999). On the existing record, we do not find that it was more probable than not that this isolated remark during the prosecutor's closing argument affected the outcome of the case. *Brownbridge, supra*. Therefore, although the argument was improper, reversal is not required.

Affirmed.

/s/ Michael R. Smolenski

/s/ Martin M. Doctoroff

/s/ Kurtis T. Wilder

³ While the prosecutor's remark did not expressly refer to additional narcotics in the vehicle, we agree with defendant's contention that a reasonable inference could be drawn from the prosecutor's statement that he was referring to more drugs. Further, to the extent that the prosecutor was referring to other contraband in the vehicle, there was no evidence to support the statement.