

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH FERGUSON,

Defendant-Appellant.

UNPUBLISHED
December 19, 1997

No. 195994
Recorder's Court
LC No. 95-011712

Before: O'Connell, P.J., and White and C. F. Youngblood*, JJ.

MEMORANDUM.

Defendant appeals by right his bench trial conviction of the cognate lesser offense of unlawfully driving away an automobile, MCL 750.413; MSA 28.645, and adjudication as a fourth offender. MCL 769.12; MSA 28.1084. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first contends that the prosecutor deprived him of a fair trial by shifting the burden of proof during closing argument. This issue is unpreserved. This Court has reviewed the record and concludes that the prosecutor was properly arguing that there was no evidence in the record in support of defendant's theory that the complainant loaned him the vehicle or traded it to him for cocaine, and thus, the prosecutor contended, defendant's continued possession of the vehicle was proof of prerequisite larcenous intent. The prosecutor's statement that evidence is undisputed or un rebutted is permissible. *People v Perry*, 218 Mich App 520, 538; 554 NW2d 362 (1996).

At sentencing, the trial court indicated it would disregard, in light of defendant's claim of inaccuracy, a reference to a conviction for resisting and obstructing an officer. That information, however, remains in the copy of the presentence report transmitted to this Court. Defendant is entitled to have that information stricken from the report and a corrected copy of the report transmitted to the Department of Corrections. *People v Martinez (After Remand)*, 210 Mich App 199, 202-203; 532 NW2d 863 (1995).

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

Conviction affirmed; remanded to the Recorder's Court for the City of Detroit for correction of the presentence report and transmittal of a corrected copy to the Department of Corrections in accordance with the foregoing opinion. We do not retain jurisdiction.

/s/ Peter D. O'Connell

/s/ Helene N. White

/s/ Carole F. Youngblood