

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

DAZHAO HE,

Defendant-Appellant.

UNPUBLISHED

December 28, 2004

No. 249240

Washtenaw Circuit Court

LC No. 01-001077-FH

Before: Meter, P.J., and Wilder and Schuette.

PER CURIAM.

Defendant appeals as of right from his conviction by a jury of possession of another's financial transaction device with intent to use, deliver, circulate, or sell, MCL 750.157p, and one count of delivery, circulation, or sale of a financial transaction device obtained or held under proscribed circumstances, MCL 750.157q. The trial court sentenced him to two concurrent terms of two years' probation. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

In the instant case, defendant allegedly took complainant's debit card without consent and used it to make purchases totaling roughly \$500.

Defendant contends that the prosecutor committed misconduct during his cross-examination of defendant. We review de novo a claim of prosecutorial misconduct. *People v Pfaffle*, 246 Mich App 282, 288; 632 NW2d 162 (2001). Prosecutors are afforded great latitude in performing their functions at trial and may argue the evidence and all reasonable inferences arising from it. *People v Thomas*, 260 Mich App 450, 454; 678 NW2d 631 (2004). Additionally, a prosecutor is allowed to respond to the evidence and to comment upon the weaknesses of the defense's theory. *People v Fields*, 450 Mich 94, 112; 538 NW2d 356 (1995).

In the instant case, the prosecutor asked defendant during cross-examination if there was anything important that he forgot to tell the jury, and defense counsel objected to the vague nature of the question. The prosecutor replied that someone telling the truth could respond to the question, and defense counsel objected to the prosecutor's comment. Assuming without deciding that these comments were improper we find no error requiring reversal since the trial court sustained defendant's objection and instructed the jury that the statements of lawyers are not evidence and that the prosecution had the burden to prove defendant's guilt. This instruction

alleviated any prejudice and rendered the prosecutor's comment harmless. *People v Akins*, 259 Mich App 545, 562-563; 675 NW2d 863 (2003).

Defendant next contends that the prosecutor made improper remarks during his closing argument when he attacked defendant's credibility, pointing out that defendant's facial "twitching" and "tics" were "textbook evidence" of untruthfulness. Also during his closing argument, the prosecutor contrasted defendant from complainant, stating that complainant "was honest." Because these remarks were not objected to at trial, the applicable test is for plain error affecting substantial rights. *People v Goodin*, 257 Mich App 425, 431-432; 668 NW2d 392 (2003).

Assuming without deciding that the prosecutor's comments, characterizing defendant as dishonest based upon his facial twitches and tics, were improper because they were not based upon facts in the evidence, nevertheless, because defendant failed to object to the prosecutor's remarks in closing argument, the comments do not warrant reversal unless they were so egregious that they could not be corrected by a curative instruction had one been requested. *Schutte, supra*, at 721. In the instant case, the jury was instructed that "[t]he lawyers' statements and arguments are not evidence," and that "it is your job to decide what the facts of this case are, and you must decide which witnesses you believe. . . ." We are satisfied that the court's instruction to the jury that the lawyers' statements and arguments were not evidence was sufficient to render the comment harmless.

Defendant also argues that the prosecutor engaged in misconduct that began in his opening argument and occurred throughout the trial. However, defendant does not support this contention with citation to any specific incidents. We will not search for authority to support a party's argument. *People v Hoffman*, 205 Mich App 1, 17; 518 NW2d 817 (1994). Therefore, no plain error occurred, and we refuse to further review defendant's claim.

Affirmed.

/s/ Patrick M. Meter
/s/ Kurtis T. Wilder
/s/ Bill Schuette