

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * NO. 2003-KA-0303
VERSUS * COURT OF APPEAL
ANITA M. VALEARY, A/K/A * FOURTH CIRCUIT
ANITA MARTIN * STATE OF LOUISIANA
*
*
*

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 428-575, SECTION "J"
Honorable Leon Cannizzaro, Judge

Judge Patricia Rivet Murray

(Court composed of Judge Patricia Rivet Murray, Judge Michael E. Kirby,
Judge David S. Gorbaty)

Eddie J. Jordan, Jr.
District Attorney
Donna R. Andrieu
Assistant District Attorney
619 South White Street
New Orleans, LA 70119
COUNSEL FOR PLAINTIFF/APPELLEE

Mary Constance Hanes
LOUISIANA APPELLATE PROJECT
P. O. Box 4015
New Orleans, LA 70178-4015

COUNSEL FOR DEFENDANT/APPELLANT

AFFIRMED

On March 8, 2002, Anita M. Valeary, also known as Anita Martin, was charged by bill of information with possession of crack cocaine. At arraignment, she pled not guilty. On July 16, 2002, a six-member jury found Ms. Martin guilty as charged. After receiving a pre-sentence evaluation, the trial court on September 16, 2002, sentenced her to three years at hard labor and ordered that the sentence be served under the provisions of La. R.S. 15:574.5, the About Face Program in the Orleans Parish Prison for women. The trial court also imposed a special provision that she successfully complete substance abuse counseling. The trial court denied her motion to reconsider sentence. This appeal followed.

FACTS

On February 26, 2002, Detective Tommy Mercadel of the New Orleans Police Department, Fifth District Narcotics Division, and about five other officers executed a search warrant at 1427 Arts Street. The officers knocked on the door at the residence, but when they failed to get an immediate response, made a forced entry into the shotgun house. In the front room, they observed two male subjects seated on a sofa; one of the

men was Gregory Campbell, Ms. Martin's fiancé. The two men were detained.

Detective Jeffrey Vappie testified that his role was to secure the rear of the house. Upon entering, he proceeded immediately to the rear of the residence where a kitchen and bathroom were located. The door to the bathroom was closed. When he opened that door, he found Ms. Martin and Vickie Piper in the bathroom. Ms. Piper was fully clothed and standing in the empty bathtub. Ms. Martin immediately moved from near the bathtub to the corner of the room. Detective Vappie then saw her drop a large piece of crack cocaine onto the floor. Ms. Martin informed him that she was handicapped, and he removed her from the bathroom to the kitchen area. Detective Vappie recovered the piece of cocaine from the floor and informed Detective Mercadel of what he had found. Ms. Martin was placed under arrest.

Detective Darrele Doucette testified that he too participated in executing the search warrant. He further testified that he questioned Ms. Martin at the kitchen table and that he searched her. In her pant's pockets, he recovered four smaller pieces of crack cocaine and \$160 in cash. The only other items the officers recovered in the house were two glass crack pipes from the front room of the house and a cell phone bill addressed to Ms.

Martin at 1427 Arts Street dated February 14, 2002.

Testifying on her own behalf, Ms. Martin stated that she resides at 1431 Arts Street with her mother, but that her fiancé, Gregory Campbell, resides at 1427 Arts Street and that she spends most of her time at that address. As noted, Mr. Campbell was one of the two men in the front room when the police entered. Ms. Martin explained that she is handicapped and has nerve damage in her legs as well as rheumatoid arthritis. She stated that Ms. Piper assisted her when a nurse was not available and that Ms. Piper had just helped her to the bathroom when the officers entered the house. Ms. Martin admitted that she had used drugs in the past and that she had two prior convictions in 1991 and 1997 for possession of cocaine. Ms. Martin stated that she would not have taken any drugs with her current medications.

Ms. Martin testified that the officers brought all four of the people in the house into the kitchen and that they questioned them as to the identity of their suppliers. She further testified that Detective Doucette told them if they provided the names of their suppliers, they would let them go. Ms. Martin replied that she did not think that was right. According to Ms. Martin, Officer Doucette at that point searched her and told her that he found four pieces of cocaine in her pocket.

It was stipulated that Officer Harry O'Neal, if called to testify, would

qualify as an expert in the identification and analysis of controlled dangerous substances, including cocaine. It was further stipulated that Officer O'Neal would testify that the pertinent pieces of evidence in this case tested positive for cocaine.

ERRORS PATENT

A review of the record for errors patent reveals none.

DISCUSSION

On appeal, Ms. Martin's sole assignment of error is that she was denied a fair trial as a result of the following statements offered by the prosecutor during closing argument:

By Mr. Sullivan: He likes to talk about his Irish grandmother. I want to talk about my mom. My mom's always told me you're going to call a man a liar, you call him a lair to his face. Three officers took the stand. They're asked questions and they answered them. I did not hear anybody he called a liar when they were sitting in this chair. Yet here at close it's easy for Mr. Meyer to call them liars. Why are they here, lie –

By Mr. Meyer: Excuse me, Judge, I'm going to object. The D.A. knows or should know that I'm not permitted to call anybody who's on that witness stand a liar. I'm not permitted to do that. And I'd be very happy to face them if they had shown up for rebuttal. I certainly would have looked their way.

By the Court: All right Mr. Meyer, this is his rebuttal argument. I will overrule your objection.

Ms. Martin contends that the statements impugned defense counsel's character and interjected into the trial an inappropriate element of bravado.

In so doing, she alleges that the prosecutor undermined her defense that that the police planted the cocaine on her. Particularly, that defense is premised on her testimony that Detective Doucette offered to let them all go if they provided the names of their suppliers and that when she refused he responded by searching her and claimed to have found four pieces of cocaine in her pocket

Although the closing arguments by defense counsel do not appear in the record, it is evident from the above statements that defense counsel implied that the detectives had not recovered the drugs in the manner they testified that they did. The record also reflects an occasion during trial in which defense counsel suggested in examining one of the detectives that he would lie to win a case. The latter suggestion was brought out at trial by defense counsel's re-cross examination of Detective Doucette regarding his inability to recall the whereabouts of Ms. Piper when the warrant was executed. Detective Doucette replied that although he was unable to recall Ms. Piper's whereabouts, he recalled Ms. Martin's whereabouts as well as what he found on her and remarked "I'm not going to sit up here and lie to you to win a case, I'm not a dirty cop."

In rebuttal closing argument, the state has the right to answer the defendant's arguments. *State v. Baudier*, 2000-1108 (La. App. 4 Cir.

5/23/01), 789 So.2d 696; La. C.Cr.P. art. 774. In this case, the state was entitled to answer the defense counsel's suggestions regarding the detectives' veracity. Moreover, prosecutors are accorded "wide latitude in choosing closing argument tactics." *State v. Hoffman*, 98-3118, p. 45 (La. 4/11/00), 768 So.2d 542, 583 (citing *State v. Martin*, 539 So.2d 1235, 1240 (La.1989)(closing arguments referring to "smoke screen" tactics and defense "commipinkos" held inarticulate but not improper); *State v. Copeland*, 530 So.2d 526, 545 (La.1988)(prosecutor's waving a gruesome photo at jury and urging jury to look at it if they become "weak kneed" during deliberations held not improper)).

In controlling the scope of closing argument, the trial court has broad discretion. *Hoffman*, 98-3118 at p. 45, 768 So.2d at 583 (citing *State v. Prestridge*, 399 So.2d 564, 580 (La.1981)). In the instant case, the trial court overruled defense counsel's objection to the prosecutor's statements that Ms. Martin challenges on appeal. We find no abuse of discretion.

We acknowledge that prosecutors should refrain from personal attacks on defense counsel's integrity. *State v. Brumfield*, 96-2667 (La. 10/20/98), 737 So.2d 660. However, even assuming the prosecutor exceeded the acceptable bounds of closing argument, a defendant's conviction will not be reversed unless the court is "thoroughly convinced" that the argument

influenced the jury and contributed to the verdict. *Hoffman*, 98-3118, p. 45, 768 So.2d at 583 (citing *State v. Martin*, 93-0285, p. 18 (La.10/17/94), 645 So.2d 190, 200; *State v. Jarman*, 445 So.2d 1184, 1188 (La.1984); *State v. Dupre*, 408 So.2d 1229, 1234 (La.1982)). Hence, “[e]ven where the prosecutor’s statements are improper, credit should be accorded to the good sense and fair-mindedness of the jurors who have heard the evidence.” *State v. Ricard*, 98-2278, 99-0424, p. 5 (La. App. 4 Cir. 1/19/00), 751 So. 2d 393, 396.

Crediting the jurors who heard the evidence in this case, it cannot be said that the prosecutor’s statements leave one thoroughly convinced that the argument influenced the jurors and contributed to the verdict. Furthermore, the state’s case against Ms. Martin was predicated on substantial evidence of guilt. The prosecutor’s statements, although outside the proper scope of closing argument, do not require relief.

DECREE

For the foregoing reasons, we affirm the defendant’s conviction and sentence.

AFFIRMED