

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES CLARK MONAGAN, a/k/a
CHARLIE CLARK MONAGAN,

Defendant-Appellant.

UNPUBLISHED
February 25, 1997

No. 187613
Calhoun Circuit court
LC No. 95-000320

Before: Bandstra, P.J., and Hoekstra and J.M. Batzer,* JJ.

PER CURIAM.

Defendant appeals as of right from his conviction by a jury of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). Defendant received a sentence of two to twenty years' imprisonment. We affirm.

I

Defendant first argues that there was insufficient evidence presented to sustain his conviction, specifically maintaining that the prosecution failed to prove that the cocaine belonged to defendant, and that it had not been planted on him (as the defense contended at trial). We disagree.

In reviewing a sufficiency of the evidence question, this Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, modified 441 Mich 1201 (1992). "Inherent in the task of considering the proofs in the light most favorable to the prosecution is the necessity to avoid a weighing of the proofs or a determination whether testimony favorable to the prosecution is to be believed. All such concerns are to be resolved in favor of the prosecution." *People v Herbert*, 444 Mich 466, 474; 511 NW2d 654 (1993). Essentially, defendant's claim here, is that the credible evidence in this case does not support

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

his conviction. Reviewing issues of credibility that were decided by the jury is not the role of this Court. *Wolfe, supra* at 514. The evidence, when examined in a light most favorable to the prosecution, is more than sufficient to support defendant's conviction.

II

Defendant next argues that he was deprived of his right to a fair trial because the trial court abused its discretion in allowing the prosecutor to introduce irrelevant and highly prejudicial evidence regarding police witnesses' experiences in unrelated drug investigations. Defendant specifically challenges the testimony of officers indicating that it was not uncommon for drugs to be packaged in clear plastic baggies secured with a knot, nor was it unusual to find drugs hidden between the mattresses of a bed. We find no abuse of discretion.

When considering that the defense advanced the theory that the police had planted the sock containing cocaine in the room defendant occupied, stressing that the sock found during the search of another dealer's motel room was packaged identically to the one supposedly found in defendant's room, we find that evidence establishing that method of packaging as one commonly used by drug traffickers, and not one peculiar to the two instances here in question, is relevant. We conclude that the officers gave proper lay witness testimony that was rationally based on their personal knowledge and experience, and that their opinions and explanations were helpful to the jury. MRE 701; *People v Daniel*, 207 Mich App 47, 57; 523 NW2d 830 (1994).

In addition to finding the evidence to be relevant, we also find that its probative value was not substantially outweighed by the danger of unfair prejudice. *People v Mills*, 450 Mich 61, 75; 537 NW2d 909 (1995), modified 450 Mich 1212. We note that just because the evidence sought by the prosecution undercut defendant's defense theory, it cannot be automatically deemed unfairly prejudicial. All relevant evidence is inherently prejudicial. *Id.*

III

Finally, defendant contends that he was denied a fair trial due to prosecutorial misconduct which involved the prosecutor eliciting testimony confirming that the searching officer had direct contact with the prosecutor's office with respect to what he should do with the discovered cocaine, and then during closing arguments, questioning what that officer would have to gain by orchestrating the event as the defense suggested. Defendant maintains that in both instances, the prosecutor improperly vouched for the credibility of the police witnesses. We disagree.

Prosecutorial misconduct issues are decided on a case-by-case basis, and this Court must examine the relevant portion of the record and evaluate the prosecutor's remarks or conduct in context. *People v Legrone*, 205 Mich App 77, 82; 517 NW2d 270 (1994). In the first instance, with respect to the testimony that someone from the prosecutor's office recommended that the police remove the sock containing cocaine rather than take a chance and leave it for defendant to retrieve, we conclude that the testimony was elicited in direct response to the defense's attack on the officer for having initially removed the cocaine. Therefore, rather than trying to enforce the officer's credibility by suggesting that

he worked side-by-side with the prosecutor's office, the prosecutor merely elicited testimony to explain why the officer removed the sock containing cocaine and replaced it with a sock containing soap.

Furthermore, our review of the record reveals that not only did the defense, too, mention a connection between the investigating officer and the prosecutor's office, such statements were at times offered by the witnesses without specific request and with no objection from the defense. Therefore, when reviewing the prosecutor's conduct in context, it is apparent that she did not elicit the officer's testimony in an attempt to bolster his credibility, nor were his statements concerning the prosecutor's office of any prejudice, given the fact that the jury was already aware that a connection existed.

Second, defendant assigns as error comments made by the prosecutor during closing arguments. Based on our review of those comments, we again conclude that the prosecutor merely addressed the challenges raised by defendant during trial, and simply asked the jury to consider what, if anything, the officer involved would have to gain by orchestrating the raid. We find that rather than vouching for the officer's credibility, the prosecutor left the question for the jury to answer. We find no misconduct, nor prejudice.

Affirmed.

/s/ Richard A. Bandstra

/s/ Joel P. Hoekstra

/s/ James M. Batzer