

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DHIA KALASHO,

Defendant-Appellant.

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UNPUBLISHED

June 17, 1997

No. 176343

Recorder's Court

LC No. 93-006682

Before: Wahls, P.J., and Gage and W.J. Nykamp,\* JJ.

PER CURIAM.

A jury convicted defendant of possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), possession of less than twenty-five grams of heroin, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and being a third habitual felony offender, MCL 769.11; MSA 28.1083. Defendant was sentenced to terms of two years' imprisonment for the felony-firearm conviction and four to eight years' imprisonment for the habitual offender conviction. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court's cursory and inadequate voir dire denied him his right to a fair and impartial jury. Defendant also argues that counsel's failure to request questions pertaining to ethnic prejudice prior to trial amounted to ineffective assistance. We disagree.

The scope of voir dire examination is in the discretion of the trial court and its rulings will not be set aside absent an abuse of that discretion. *People v Sawyer*, 215 Mich App 183, 186; 545 NW2d 6 (1996). Here, it is evident that there was sufficient information from which the parties could knowledgeably exercise their peremptory challenges. *Id.* at 187; see *People v Tyburski*, 445 Mich 606, 630, 637; 518 NW2d 441 (1994). Furthermore, because this was a simple narcotics possession case which contained no overtones of race or ethnicity, defendant was not entitled to question the prospective jurors about any possible racial prejudice. *Ristaino v Ross*, 424 US 589; 96 S Ct 1017,

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

1021-1022; 47 L Ed 2d 258 (1976); *People v Daniels*, 192 Mich App 658, 666-667; 482 NW2d 176 (1992). Defendant's claim of ineffective assistance of counsel also fails as there has been no adequate showing of prejudice. *People v Poole*, 218 Mich App 702, 717; 555 NW2d 485 (1996).

Defendant argues that he was denied his right to a fair and impartial jury by the jurors' non-disclosure of prejudice against Arabs as well as against the Kalasho family and their alleged connection to the drug trade. We disagree. The decision whether to grant a new trial is within the trial court's discretion and its decision will not be reversed absent an abuse of that discretion. *People v Herbert*, 444 Mich 466, 477; 511 NW2d 654 (1993). The jury's limited conversation regarding its recognition of defendant's name, its meager knowledge surrounding the alleged involvement of the Kalasho family in the drug trade, combined with the fact that it based its verdict on the evidence presented, demonstrated that it was impartial and that its verdict was fair and just. Thus, the trial court did not abuse its discretion when it denied defendant's motion for a new trial on this ground. *Id.*

Next, defendant contends that the trial court erred by allowing the prosecutor to introduce evidence that there was a court-ordered search warrant instructing the police to search "Dhia" for drugs. Because defendant did not object to admission of the contents of the search warrant, this issue is not properly before this Court and we decline to review it. MRE 103(a)(1); *People v Grant*, 445 Mich 535, 545, 553; 520 NW2d 123 (1994).

Defendant contends that the prosecutor's repeated and vitriolic attacks on defense counsel's veracity, and the prosecutor's injection of facts not in evidence, denied defendant his right to a fair trial. We disagree. The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. *People v Lawton*, 196 Mich App 341, 353; 492 NW2d 810 (1992). Prosecutorial comments must be read as a whole and evaluated in light of defense arguments and the relationship they bear to the evidence admitted at trial. *Id.* at 353, 355. Because the comments concerning defense counsel were made in response to defense counsel's arguments, we decline to reverse. *People v Simon*, 174 Mich App 649, 655; 436 NW2d 695 (1989). Furthermore, in light of the court's instructions that the jury could not consider the attorney's arguments as evidence and that it could infer from Officer Malotte's absence that he would be an adverse witness, any error was harmless. See *People v Mezy*, 453 Mich 269, 286; 551 NW2d 389 (1996) (Weaver, J.).

Defendant argues that the trial court erred when it refused to issue an instruction on the misdemeanor offense of loitering in a place where an illegal business is being conducted. We disagree.

The decision whether to issue a misdemeanor instruction rests with the trial court and will not be reversed absent an abuse of discretion. *People v Dabish*, 181 Mich App 469, 474; 450 NW2d 44 (1989). Whenever an adequate request for an appropriate misdemeanor instruction is supported by a rational view of the evidence presented at trial, the trial judge must give the requested instruction unless to do so would result in undue confusion, violation of due process, or some other injustice. *People v Stephens*, 416 Mich 252, 255; 330 NW2d 675 (1982). Because there was evidence here that defendant resided in the house where the drugs were recovered, one of the officers saw defendant hiding a plastic bag containing the drugs in the couch where defendant was sitting, and another officer

recovered the drugs from the couch where defendant had been sitting, the evidence did not support the giving of an instruction on loitering. *People v Rollins*, 207 Mich App 465, 468-469; 525 NW2d 484 (1994).

Finally, defendant contends that the trial court erred when it denied defendant's motion for a directed verdict on the charges of possession with intent to deliver as there was no evidence that defendant had an intent to deliver. We disagree. When ruling on a motion for a directed verdict, the court must consider the evidence presented by the prosecutor up to the time the motion was made in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the charged crime were proven beyond a reasonable doubt. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993).

Here, there was evidence that defendant, the subject of a valid search warrant and wanted in connection with the sale of controlled substances, attempted to hide a plastic bag containing various controlled substances including cocaine, heroin and LSD. In addition, the police recovered from the house where defendant resided a sifter, a grinder and a jar of lactose, a substance used for cutting drugs. Under these circumstances, a rational trier of fact could find that the essential elements of the charged crime were proven beyond a reasonable doubt. See *People v Ferguson*, 94 Mich App 137, 151; 288 NW2d 587 (1979); *People v Mumford*, 60 Mich App 279, 283; 230 NW2d 395 (1975). Thus, the trial court did not err when it denied defendant's motion for a directed verdict on the charge of possession with intent to deliver. *Jolly*, *supra* at 466; *People v Catanzarite*, 211 Mich App 573, 578; 536 NW2d 570 (1995).

Affirmed.

/s/ Myron H. Wahls  
/s/ Hilda R. Gage  
/s/ Wesley J. Nykamp