

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN DWAYNE DAVIS,

Defendant-Appellant.

UNPUBLISHED

July 1, 1997

No. 185853

Recorder's Court

LC No. 94-005271

Before: Cavanagh, P.J., and Doctoroff and D.A. Teeple*, JJ.

MEMORANDUM.

Defendant was convicted by jury of possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(1) and (2)(a)(iv); MSA 14.15(7401)(1) and (2)(a)(iv), and sentenced to four to twenty years' imprisonment. Defendant appeals as of right. We affirm.

Defendant argues that he was deprived of a fair trial by improper remarks made by the prosecutor during closing and rebuttal arguments. Defendant failed to object to the remarks he now claims are improper. Accordingly, appellate review is precluded unless the failure to consider the issue would result in a miscarriage of justice. *People v McElhaney*, 215 Mich App 269, 283; 545 NW2d 18 (1996). No miscarriage of justice will result in this case absent review.

The prosecutor did not advance improper burden-shifting arguments. Instead, the prosecutor's remarks constituted proper argument on the inferences created by defendant's evidence. *People v Fields*, 450 Mich 94, 115; 538 NW2d 356 (1995). Additionally, the prosecutor did not appeal to the jury to perform the civic duty of supporting the police. *People v Farrar*, 36 Mich App 294, 298; 193 NW2d 363 (1971). The challenged remarks constituted proper argument on the evidence. Finally, the prosecutor did not improperly vouch for the credibility of the prosecution witnesses. *People v Bahoda*, 448 Mich 261, 276; 531 NW2d 659 (1995); *People v Wise*, 134 Mich App 82, 104; 351 NW2d 255 (1984).

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

Defense counsel's failure to object to the remarks upon which defendant premises his claim of prosecutorial misconduct did not constitute ineffective assistance. Counsel cannot be considered ineffective for failing to take a frivolous action. See *People v Gist*, 188 Mich App 610, 613; 470 NW2d 475 (1991).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Martin M. Doctoroff
/s/ Donald A. Teeple