

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALEX TERRELL PRATT,

Defendant-Appellant.

UNPUBLISHED

January 13, 1998

No. 193840

Kalamazoo Circuit Court

LC No. 95-001217 FH

Before: Gage, P.J., and Murphy and Reilly, JJ.

MEMORANDUM.

Defendant was convicted by jury of possession of less than 25 grams of cocaine, MCL 333.7403(1) and (2)(a)(v); MSA 14.15(7403)(1) and (2)(a)(v), and sentenced to an enhanced term of imprisonment of three to eight years, MCL 769.12; MSA 28.1084. Defendant appeals as of right. We affirm.

The prosecutor did not inject “drug dealer profile” evidence into the trial and then argue the evidence as substantive evidence of guilt. *People v Hubbard*, 209 Mich App 234, 241; 530 NW2d 130 (1995). The testimony of officer Butler concerning what he saw transpiring in the intersection merely presented facts preceding and leading up to defendant’s apprehension that would make it more natural and probable that the police would both expect to find and would actually find defendant in possession of cocaine. As such, the testimony is relevant and admissible as part of the principal transaction. *People v DerMartex*, 390 Mich 410, 414; 213 NW2d 97 (1973). Additionally, Butler’s testimony that, based on numerous drug transactions he had witnessed in the past, what he observed transpire in the intersection led him to conclude that he was witnessing the sale of controlled substances, was admissible pursuant to MRE 701 because it was based on Butler’s perception and assisted the jury in understanding why the police suspected defendant of possessing cocaine. *People v Daniel*, 207 Mich App 47, 57; 523 NW2d 830 (1994). Under these circumstances, the prosecutor’s challenged remarks made during opening statement merely reflect a proper statement of the evidence to be presented, *People v Johnson*, 187 Mich App 621, 626; 468 NW2d 307 (1991), and the prosecutor’s challenged remarks made during closing argument merely constitute proper argument of

the evidence and inferences arising therefrom, *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995).

The prosecutor did not shift the burden of proof during closing argument. *People v Green*, 131 Mich App 232, 237; 345 NW2d 676 (1983). Read in context, the challenged question posed by the prosecutor was not designed to suggest that defendant needed to provide a reasonable explanation for his conduct. Instead, the question was posed rhetorically and immediately answered by the prosecutor, based on the evidence adduced at trial.

Defendant failed to preserve his remaining claims of prosecutorial misconduct for appellate review. Accordingly, appellate review of these remaining claims is precluded unless an objection could not have cured the error or a failure to review the issue would result in a miscarriage of justice. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). Neither situation is present here. While the prosecutor might have argued facts not in evidence on one occasion, a timely objection by defense counsel could have cured any prejudice, either by precluding such remarks or by obtaining an appropriate cautionary instruction. *People v Buckey*, 424 Mich 1, 18; 378 NW2d 432 (1985). Viewing the remainder of the prosecutor's remarks in the context in which they were made, *People v LeGrone*, 205 Mich App 77, 82; 517 NW2d 270 (1994), the challenged remarks constitute proper comment on the evidence. *Bahoda, supra*.

Affirmed.

/s/ Hilda R. Gage
/s/ William B. Murphy
/s/ Maureen Pulte Reilly