

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEMARCO R. BROWN,

Defendant-Appellant.

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UNPUBLISHED

April 18, 2000

No. 213421

Wayne Circuit Court

Criminal Division

LC No. 98-001907

Before: Griffin, P.J., and Holbrook, Jr., and J.B. Sullivan\*, JJ.

PER CURIAM.

Defendant was convicted 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). Thereafter sentenced to a term of three to twenty years' imprisonment he now appeals as of right. We affirm.

Defendant first argues that the prosecutor's misconduct deprived him of a fair trial. Specifically, defendant contends that the prosecutor violated a pretrial evidentiary ruling, improperly vouched for the credibility of witnesses and injected his personal opinion, improperly denigrated defense counsel, and introduced improper rebuttal testimony. We review the prosecutor's remarks and conduct in context and in light of the record as a whole. *People v Lawton*, 196 Mich App 341, 353; 492 NW2d 810 (1992). The test for prosecutorial misconduct is whether the defendant was deprived of a fair trial. *People v Bahoda*, 448 Mich 261, 266-267, nn 5-7; 531 NW2d 659 (1995).

Assuming the prosecutor violated the trial court's pretrial ruling by indicating that the police went to the crime scene in response to a radio run of a narcotics' "transaction" and further assuming that the prosecutor improperly introduced extrinsic impeachment evidence during his rebuttal examination of a police officer, we cannot conclude that either of these isolated incidents affected the outcome of the proceedings or deprived defendant of a fair trial. Hence, reversal is not required. *Bahoda, supra*.

Defendant did not object to the remaining instances of alleged misconduct at trial. The prosecutor was free to argue that defendant's witnesses were untruthful and that his witnesses

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

were telling the truth. *People v Howard*, 226 Mich App 528, 548; 575 NW2d 16 (1997). Similarly, the prosecutor was free to argue that the issues raised by defense counsel during trial were irrelevant to the question of defendant's guilt or innocence. *People v Kennebrew*, 220 Mich App 601, 607-608; 560 NW 2d 354 (1996). Although the prosecutor sometime referred to the police officers as "my" or "our" officers, viewed as a whole, the prosecutor's remarks were made in the context of referring to the evidence at trial. We are satisfied from our review of the record that none of the challenged remarks were so improper that their prejudicial effect, if any, could not have been cured by a timely instruction upon request. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). Thus, appellate relief is not warranted.

Defendant next argues that the trial court abused its discretion in allegedly delegating to the attorneys the decision of whether to allow jurors to ask questions. See *People v Heard*, 388 Mich 182, 188; 200 NW2d 73 (1972). Because counsel did not object to the procedure suggested by the trial court for responding to juror's questions, appellate relief is unwarranted absent manifest injustice. *People v Wesley*, 148 Mich App 758, 760-761; 384 NW2d 783 (1985). The record indicates that the trial court did not foreclose juror questions altogether, but left it to the discretion of the attorneys whether to conduct follow-up questioning of witnesses in response to questions from jurors. It was a reasonable exercise of the trial court's discretion to allow the respective attorneys the strategic choice whether to ask such questions. *Heard, supra*. See, also, *People v Charles*, 58 Mich App 371, 379-380; 227 NW2d 348 (1975). Further, the trial court's handling of the situation did not have the effect of improperly shifting the burden of proof to defendant.

Next, defendant argues that defense counsel was ineffective for failing to object to the prosecutor's comments during closing and rebuttal arguments, for failing to object to the trial court's method of responding to the juror's questions, and for failing to request an instruction on the lesser included offense of simple possession. We disagree.

The prosecutor's remarks, for the most part, constituted proper commentary of the evidence and witnesses at trial. To the extent that some of the remarks may be deemed improper, we are satisfied they did not effect the outcome of the proceedings. Hence, defendant is unable to establish the requisite prejudice to prevail on a claim of ineffective assistance of counsel. *People v LaVearn*, 448 Mich 207, 216; 528 NW2d 721 (1995). Further, as indicated previously, the trial court's method for responding to the juror's questions constituted a reasonable exercise of discretion and, therefore, defense counsel was not ineffective for failing to object to this method. *People v Briseno*, 211 Mich App 11, 17; 535 NW2d 559 (1995). Lastly, defendant has not overcome the presumption that counsel's decision not to request a lesser offense instruction on simple possession was a matter of sound trial strategy. *LaVearn, supra* at 216.

Defendant also claims there was insufficient evidence to prove the element of intent to deliver. We disagree. Viewed in a light most favorable to the prosecution, the quantity of the cocaine and the manner in which it was packaged was sufficient to infer intent to deliver beyond a reasonable doubt. *People v Fetterley*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998).

Lastly, defendant argues that the cumulative effect of several errors deprived him of a fair trial. We disagree. None of defendant's claimed errors, individually or cumulatively, were prejudicial to the defendant nor did they deprive him of a fair trial. *People v Daoust*, 228 Mich App 1, 16; 577 NW2d 179 (1998).

Affirmed.

/s/ Richard Allen Griffin

/s/ Donald E. Holbrook, Jr.

/s/ Joseph B. Sullivan