

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BILLY JOE WASHINGTON, JR.,

Defendant-Appellant.

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UNPUBLISHED

May 26, 2000

No. 218479

Berrien Circuit Court

LC No. 98-403999-FC

Before: Bandstra, C.J., and Jansen and Whitbeck, JJ.

PER CURIAM.

A jury convicted defendant Billy Joe Washington, Jr. of two counts of delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv), MSA 14.15(7401)(2)(a)(iv). The trial court sentenced Washington as a second drug offender, MCL 333.7413(2); MSA 14.15(7413)(2), to consecutive terms of three to forty years' imprisonment. Washington appeals as of right. We affirm.

I. Basic Facts And Procedural History

The sole issue on appeal involves Washington's allegation that the prosecutor improperly vouched for the credibility of a witness during his closing arguments. The witness, Mark Myers, was a confidential informant for the police during a controlled drug transaction involving Washington. In closing, the prosecutor remarked in pertinent part:

Which leave us with the last element, whether or not that cocaine was delivered. And the Judge is going to give you an instruction on exactly what delivery means. It's essentially an exchange, a transfer from one person to another. And again, I think the evidence that was presented yesterday shows conclusively that there was in fact an exchange.

And again, I—for the same reasons on—on identity, we have the testimony of Mark Myers. Clearly, I—I don't know what you think of the man personally, clearly he was not a professional witness. He didn't have a lot of specific recall. He argued with Attorney Banyon and he was irritated and got frustrated and—and I understand

that, but I think the most telling thing about Mr. Myers' testimony, and I couldn't say it better, he said, "What's to remember? I bought cocaine and Billy Washington sold it to me."

And I think that's the bottom line. Mark Myers was testifying truthfully that he bought cocaine from Billy Washington. We have that testimony. Again, we have the detective—the testimony of detective Knizewski who said that he was there 30, 40 yards away, I believe, sitting across the street. Saw the defendant standing in the yard. Saw an exchange of sorts with touching of the hands once. Saw the defendant walk away, come back, another exchange. Mark Myers came directly back to that car and gave the detective that cocaine.

And finally we have the testimony of Detective Gillespie again saying that he saw defendant, Billy Washington, walking away from that house, coming back.

I think it's very clear—I don't think there's any doubt that, in fact, a transfer of cocaine occurred between Billy Washington and Mark Myers.

## II. Vouching For A Witness

### A. Preservation Of The Issue And Standard Of Review

"Appellate review of improper prosecutorial remarks is generally precluded absent objection by counsel because the trial counsel is otherwise deprived of an opportunity to cure the error." *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). Washington did not object to the prosecutor's remarks, and thus, this issue is not preserved for appeal. As a result, our review is limited to plain error affecting Washington's substantial rights. *People v Cannes*, 460 Mich 750, 774; 597 NW2d 130 (1999).

### B. Vouching For Credibility Versus Arguing From The Facts

A prosecutor may not vouch for the credibility of a witness. *People v Howard*, 226 Mich App 528, 548; 575 NW2d 16 (1997). Improper vouching occurs when a prosecutor states or implies that he has some special knowledge that the witness is testifying truthfully. *Id.*, citing *People v Bahoda*, 448 Mich 261, 276; 531 NW2d 659 (1995). A prosecutor may, however, make forceful arguments on the basis of the evidence adduced at trial, which includes arguing that particular witnesses may or may not be credible. *Howard, supra*.

Here, the prosecutor's comments did not constitute improper vouching because the prosecutor did not imply that he had any special knowledge of Myers' credibility. Instead, the prosecutor was arguing that the terseness of Myers' testimony concerning the delivery of the cocaine indicated that Myers was being truthful and that Myers' hostility toward Washington's counsel should not factor into Myers' credibility. Further, the prosecutor was arguing that Myers made a clear identification of Washington and that Myers' identification was believable because two detectives corroborated it. Thus, we conclude that Washington's claim of prosecutorial

misconduct is without merit. As Washington has not shown a plain error, we need not determine if the prosecutor's comments affected his substantial rights.

Affirmed.

/s/ Richard A. Bandstra

/s/ Kathleen Jansen

/s/ William C. Whitbeck