STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MAURICE JUNIOR BEAUGARD,

Defendant-Appellant.

UNPUBLISHED
January 23, 2001

No. 211457
Genesee Circuit Court
LC No. 97-000118-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAMON EDRECE JOHNSON,

Defendant-Appellant.

No. 211973
Genesee Circuit Court
LC No. 97-000124-FH

Before: Neff, P.J., and Holbrook, Jr., and Jansen, JJ.

PER CURIAM.

In this consolidated appeal following defendants' joint jury trial, defendant Johnson appeals his convictions for possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii); MSA 14.15(7401)(2)(d)(iii), carrying a concealed weapon, MCL 750.227; MSA 28.424, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and defendant Beaugard appeals his convictions for three counts of being an accessory after the fact, MCL 750.505; MSA 28.773. Johnson was sentenced to one to twenty years' imprisonment for the possession with intent to deliver cocaine conviction, one to four years' imprisonment for the possession with intent to deliver marijuana conviction, and two years' imprisonment for the felony-firearm conviction, the sentences to be served consecutively. He was sentenced to two to five years' imprisonment for the carrying a concealed weapon conviction, to be served concurrently. Beaugard was sentenced to five years' probation

for his three convictions. Defendants appeal as of right. We affirm, but remand Docket No. 211457 to the lower court for correction of the judgment of sentence.

I

On appeal, Beaugard contends that the prosecutor's improper comments during closing argument denied him a fair trial. We disagree. Appellate review of alleged prosecutorial misconduct is precluded unless a defendant makes a timely objection. *People v Carines*, 460 Mich 750, 761-762; 597 NW2d 130 (1999); *People v Schutte*, 240 Mich App 713, 720; 613 NW2d 370 (2000). Absent an objection, we will review the defendant's claim only for plain error. *Id.* Prosecutorial misconduct is reviewed on a case-by-case basis, considering contested remarks in context, as a whole, and in light of defense arguments. *Id.* While prosecutors may properly argue the evidence and all reasonable inferences, they may not make a statement of fact that is unsupported by the evidence in the case. *Id.*; *People v Kelly*, 231 Mich App 627, 641; 588 NW2d 480 (1998).

Beaugard contends that the prosecutor's argument was improper because there was no evidence that defendants were driving around with guns and drugs, which they concealed under the console when Johnson's car was stopped by the police. However, the prosecutor's argument was based on reasonable inferences from the evidence at trial. Michigan State Police Trooper Joseph Vander Meulen testified that after he stopped Johnson's car, both Johnson and Beaugard were moving around frantically, continuously looking back at Vander Meulen's squad car. Furthermore, Vander Meulen saw Beaugard bend forward toward the floor board, and, as he approached the vehicle, he observed Beaugard's arm partially under the center console. Considering the evidence, the prosecutor's comments constituted proper argument.

Beaugard also contends that the prosecutor improperly argued that, prior to the stop, defendants were riding around selling drugs, with the guns and drugs on their laps. This argument again was a reasonable inference from the evidence. If defendants were moving around inside the car during the stop, as if attempting to hide something, then the contraband must have been in plain view prior to the stop. The presence of the scale, the guns, the baking soda, and the baggies, along with the lack of drug-use paraphernalia indicated that defendants were attempting to sell the drugs at the time that they were stopped. Therefore, the prosecutor's argument constituted a reasonable inference from the evidence. Because the prosecutor's argument was proper, there is no error. See *Schutte*, *supra* at 720.

Beaugard next argues that his judgment of sentence is inaccurate. We agree. Beaugard's judgment of sentence indicates that he was convicted of possession with intent to deliver less than fifty grams of cocaine, carrying a concealed weapon, and felony-firearm, rather than three counts of accessory after the fact. MCR 6.427(3) requires a trial court to enter a judgment of sentence that includes the crimes for which a defendant was convicted. As such, Docket No. 211457 must be remanded to the lower court to amend the judgment of sentence to reflect the crimes for which Beaugard was convicted. *People v Mass*, 238 Mich App 333, 342; 605 NW2d 322 (1999), lv gtd on other grounds 462 Mich 877 (2000).

II

Defendant Johnson first argues on appeal that the trial court abused its discretion by admitting the expert testimony of Lieutenant Michael Compeau. We disagree. The decision to admit expert testimony is within the sound discretion of the trial court and will not be reversed absent a clear abuse of discretion. *People v Wilson*, 194 Mich App 599, 602; 487 NW2d 822 (1992).

For expert testimony to be admissible, the expert must be qualified, the evidence must serve to give the trier of fact a better understanding of the evidence or assist the trier of fact in determining a fact in issue, and the evidence must be from a recognized discipline. MRE 702; *People v Christel*, 449 Mich 578, 587; 537 NW2d 194 (1995); *People v Parcha*, 227 Mich App 236, 239-240; 575 NW2d 316 (1997). A police officer may be qualified to testify as an expert on the basis of his knowledge, training, and experience. *Id.* at 240.

Johnson contends that Compeau was not qualified to testify as an expert. However, the record is to the contrary. Compeau was a lieutenant for the Genesee County Sheriff's Department and was assigned to the Flint Area Narcotics Group (FANG). He had been involved with FANG for eight years and was in charge of an investigative team. Thirty to forty percent of his cases dealt with cocaine, and fifty percent of his cases involved marijuana. He had previously worked in an undercover capacity. Between four and five hundred of his arrests involved cocaine, and between six and eight hundred involved marijuana. Compeau had been a police officer since 1975 and attended both basic and advanced narcotics investigation training programs. Since 1991, Compeau attended the Michigan State Police Search Warrant and Raid Entry School, the Southeastern Center for Police Law training for drug interdiction, the Advanced Drug Enforcement Strategy and Tactics program, and multiple State Police Lieutenants Conferences. Based on Compeau's knowledge, training, and experience, the trial court did not abuse its discretion by admitting his expert testimony.

Johnson also argues that drug trafficking is within the understanding of ordinary persons, and that Compeau's testimony reflected merely a hunch based on anecdotal drug profiling. We disagree. Compeau testified that his opinion was based on the fact that Vander Meulen recovered a scale with a white powdery substance on it, a box of plastic sandwich baggies, baking soda, and two firearms from the vehicle. He testified that plastic sandwich baggies, such as those found in the vehicle, were often used to package drugs, and that baking soda, also found in the car, was typically mixed with powder cocaine to add volume merely for selling. Compeau described drug use techniques and testified that no use paraphernalia was found in the vehicle. Further, the amounts of drugs involved in this case were more than a mere user would likely have in his possession. Compeau's testimony involved matters not within the scope of ordinary jurors and was not based solely on a hunch.

Johnson next contends that there was insufficient evidence to support his convictions because none of the physical evidence was admitted into evidence at trial. We disagree. In reviewing a claim of insufficient evidence, we view the evidence in the light most favorable to the prosecution and determine whether there was sufficient evidence to justify a rational trier of fact in finding guilt beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). At trial, the prosecutor moved to introduce the physical

evidence, and the evidence was received by the trial court, subject to identification. Thereafter, Vander Meulen identified the evidence. Johnson's argument is without merit.

Affirmed, but Docket No. 211457 is remanded to the lower court for the limited purpose of amending the judgment of sentence. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ Donald E. Holbrook, Jr.
/s/ Kathleen Jansen