

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CALVIN HOWARD,

Defendant-Appellant.

UNPUBLISHED

May 3, 2002

No. 229138

Oakland Circuit Court

LC No. 99-168634-FH

Before: Zahra, P.J., and Neff and Saad, JJ.

SAAD, J. (*concurring*).

I concur in the result and write separately because I disagree with the majority's observations that the prosecutor's remarks, "come dangerously close to exceeding the bounds of permissible argument." I also disagree with the majority's assertion that the prosecutor's comments during closing argument, coupled with her *voir dire* questioning, "border on impermissible bolstering of a witness' credibility."

The prosecutor here did not "vouch" for the credibility of the police witness, nor did the prosecutor make any suggestion that she had some special knowledge of the veracity of the witness. Rather, the prosecutor made permissible comments concerning the expertise of the witness as a narcotics officer. A prosecutor's remarks concerning the special expertise and "street knowledge" of a police officer is not tantamount to "vouching" for the veracity or truthfulness of the witness. For example, in *People v Ramsdell*, 230 Mich App 386, 404; 585 NW2d 1 (1998), defendant objected to the following comments made by the prosecutor during opening statement:

And, the correction officers that work behind the bars, that don't have weapons, there's [sic] a lot more prisoners than they are [sic]. They're highly trained. They're trained to observe. They're trained to be watchful; to record things that happen. And, they will be telling you about that. They're supposed to be very observant about things. Subtle things that may occur.

In analyzing the issue, our Court pointed out the distinction between impermissible vouching and appropriate comment on the expertise of police officials:

The remarks at issue were not improper. A prosecutor may not vouch for witness credibility or suggest that the government has some special knowledge

that a witness will testify truthfully. However, the remarks at issue did not improperly vouch for the credibility of prosecution witnesses, but rather provided a reasonable explanation for why correctional officers testifying on behalf of the prosecution would have been alert to occurrences that would likely escape the notice of others. [*Id.* (citation omitted).]

Similarly, here, the prosecutor did not vouch for the veracity of the police officer, but merely commented on the officer's knowledge and expertise regarding drug sales that informed his testimony.

Accordingly, I regard these remarks as permissible observations and legitimate comment by the prosecutor, not improper vouching.¹

/s/ Henry William Saad

¹ See, generally, anno: *Propriety and prejudicial effect of comments by counsel vouching for credibility of witness – state cases*, 45 ALR 4th 602.