

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEZVON DANDRIDGE,

Defendant-Appellant.

UNPUBLISHED

May 17, 2002

No. 230512

Wayne Circuit Court

LC No. 99-007947

Before: Bandstra, P.J., and Smolenski and Meter, JJ.

PER CURIAM.

Defendant appeals by right his jury trial conviction of possessing between 225 and 649 grams of a controlled substance with intent to deliver, MCL 333.7401(2)(a)(ii). Defendant was sentenced to 20 to 30 years' imprisonment. We affirm.

Defendant argues that the trial court erred in refusing to dismiss the charges because of unreasonable delay in his arrest and prosecution. We disagree. "A challenge to a prearrest delay implicates constitutional due process rights, which this Court reviews de novo." *People v Cain*, 238 Mich App 95, 108; 605 NW2d 28 (1999).

Procedural due process protects an accused from excessive delay between the commission of an offense and his arrest for that offense. US Const Am XIV; Const 1963, art 1, § 17. However, before dismissal may be granted because of prearrest delay, there must be actual and substantial prejudice to the defendant's right to a fair trial and intent by the prosecution to gain a tactical advantage. *People v Adams*, 232 Mich App 128, 133-134; 591 NW2d 44 (1998); *People v White*, 208 Mich App 126, 134; 527 NW2d 34 (1994). To be substantial, the prejudice to the defendant must meaningfully impair his ability to defend against the charges against him in such a manner that the outcome of the proceedings will likely be affected. *Adams, supra* at 134-135. Proof of "actual and substantial" prejudice requires more than just generalized allegations. *Id.* at 135. Here, defendant alleges that the delay prevented him from calling certain witnesses, but fails to specify any exculpatory testimony that they would have given. We agree with the trial court that such speculative allegations are insufficient to establish actual and substantial prejudice. *Id.*; see also *Cain, supra* at 109-110. Furthermore, there is no evidence that the prosecution intentionally delayed defendant's arrest in order to gain a tactical advantage. Thus, defendant has not shown that a due process violation occurred.

Defendant also argues that he was denied a fair trial because the prosecutor improperly commented on the evidence and vouched for the credibility of police witnesses. Because defendant failed to object to the challenged comments, our review is for plain error affecting defendant's substantial rights. *People v Pfaffle*, 246 Mich App 282, 288; 632 NW2d 162 (2001).

We decide issues of prosecutorial misconduct by reviewing the pertinent portion of the record and examining the prosecutor's remarks in context. *People v Noble*, 238 Mich App 647, 660; 608 NW2d 123 (1999). "[A]n otherwise improper remark may not rise to an error requiring reversal when the prosecutor is responding to the defense counsel's argument." *People v Watson*, 245 Mich App 572, 592-593; 629 NW2d 411 (2001), quoting *People v Kennebrew*, 220 Mich App 601, 608; 560 NW2d 354 (1996). Here, when read in context, it is clear that the challenged comments were made in response to defense counsel's closing argument, and related to his claims that the arresting officers tampered with evidence and had been untruthful regarding defendant's statements to them after his arrest. Given the responsive nature of the challenged comments, we find that defendant has failed to demonstrate that the prosecutor's remarks were plainly improper. *Watson, supra*. In any event, even assuming that the prosecutor's comments were improper, any prejudice that may have occurred was eliminated by the trial court's instruction that the attorneys' closing arguments were not evidence. See *People v Green*, 228 Mich App 684, 692-693; 580 NW2d 444 (1998).

We affirm.

/s/ Richard A. Bandstra
/s/ Michael R. Smolenski
/s/ Patrick M. Meter