

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK ADAM TIMS,

Defendant-Appellant.

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UNPUBLISHED  
February 20, 2007

No. 265108  
Kent Circuit Court  
LC No. 04-001514-FC

Before: Fort Hood, P.J., and Smolenski and Murray, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction for armed robbery, MCL 750.529. Defendant was sentenced to 12 to 50 years' imprisonment. We affirm.

Defendant's first issue on appeal is that the trial court erred by refusing to excuse a juror for cause. Defendant waived this issue because he failed to exhaust his peremptory challenges and expressed satisfaction with the impaneled jury. See *People v Legrone*, 205 Mich App 77, 82; 517 NW2d 270 (1994).

Defendant's second issue on appeal is that he was deprived of a fair trial due to remarks the prosecutor made during closing arguments. Although defendant claims, on appeal, that the remarks violated his Sixth Amendment right of confrontation, defendant's basis for objection at trial was prosecutorial misconduct. In addition, the Sixth Amendment is inapplicable to the present situation because the prosecutor did not introduce a testimonial statement from a witness, who defendant did not have an opportunity to cross-examine. See e.g., *Crawford v Washington*, 541 US 36; 124 S Ct 1354; 158 L Ed 2d 177 (2004).

We review claims of prosecutorial misconduct on a case-by-case basis to decide whether the prosecutor's comments, taken in context, deprived defendant of a fair and impartial trial. *People v McElhaney*, 215 Mich App 269, 283; 545 NW2d 18 (1996). Defendant claims that the prosecutor argued facts not in evidence and gave personal testimony during his rebuttal argument. We disagree. The prosecutor merely drew an inference for the jury based on common sense and the facts admitted as evidence. The court clarified the prosecutor's point upon objection by defendant, and noted that the prosecutor was trying to argue that defendant's testimony, that he had seen an officer's notes, was improbable given the fact that the prosecutor had not seen the handwritten interview notes. Because the argument was based on common sense and a reasonable inference, we find that it was appropriate. *People v Bahoda*, 448 Mich

261, 282; 531 NW2d 659 (1995). In so ruling, we note that, even if the comment was inappropriate, defendant was not denied a fair trial. The jury was instructed that the attorneys' arguments were not evidence. We hold that no prosecutorial misconduct occurred.

Defendant's third issue on appeal is that the trial court erred by foreclosing the jury from rehearing trial testimony. There is no error present for our review because defendant waived this issue by failing to lodge an objection and expressly approving the court's response to the jury's request to rehear testimony. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000).

Affirmed.

/s/ Karen M. Fort Hood  
/s/ Michael R. Smolenski  
/s/ Christopher M. Murray