

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

QUANTAE DERRILL BAILEY,

Defendant-Appellant.

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UNPUBLISHED  
September 13, 2012

No. 305987  
Muskegon Circuit Court  
LC No. 10-059236-FC

Before: WILDER, P.J., and O'CONNELL and K. F. KELLY, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529; and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced as an habitual offender, second offense, MCL 769.10, to 23 to 40 years' imprisonment for armed robbery and two years' imprisonment for felony-firearm. Defendant appeals as of right. We affirm.

Defendant argues that the prosecutor engaged in misconduct during three portions of his rebuttal closing argument. Defendant did not object to the claimed prosecutorial misconduct at trial, and thus, his challenges are unpreserved. *People v Unger*, 278 Mich App 210, 234-235; 749 NW2d 272 (2008). We review unpreserved claims of prosecutorial misconduct for plain error affecting defendant's substantial rights. *Id.* at 235. Prosecutorial misconduct occurs if a defendant is denied a fair trial, *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001), and claims of prosecutorial misconduct are reviewed case by case, with the prosecutor's remarks evaluated in context, *People v Dobek*, 274 Mich App 58, 64; 732 NW2d 546 (2007).

Defendant first challenges remarks the prosecutor made during rebuttal closing argument, when the prosecutor referenced "stories" defense counsel told during his closing argument and argued that "[t]his case isn't about telling stories," "it's not about trying to empower you and your sense of duty as he tried to do several times" and that "[t]his is about the evidence in this case." The prosecutor also noted that defense counsel "wants you folks just to toss [the victim's] testimony right out the window like it didn't even exist" because defense counsel wanted to "cloud [the jury's] ability to properly evaluate the evidence in this case." Defendant claims that in making this argument, the prosecutor improperly suggested that defense counsel was trying to mislead the jury. See e.g., *People v Fyda*, 288 Mich App 446, 461; 793 NW2d 712 (2010). We disagree.

Contrary to defendant's claims, the prosecutor's rebuttal arguments at issue in this case are nothing like the arguments the Court denounced in *People v Dalessandro*, 165 Mich App 569, 579; 419 NW2d 609 (1988). Also, the comments are distinct from those of the prosecutor in *Unger*, 278 Mich App at 238, who made improper comments during the initial closing argument (as opposed to the rebuttal argument here). Instead, the prosecutor's comments in this case are analogous to those in *Watson*, 245 Mich App at 592. In *Watson*, and in this case, the prosecutors suggested that defense counsel was trying to distract the jury from the truth. *Id.* at 592-593. The prosecutors in both cases made their comments in the context of responding to arguments made by defense counsel. *Id.* In context, the prosecutor's comments in this case were properly responsive to defense counsel's arguments by emphasizing the "truth of the big picture." *Id.* at 593; see also *People v Kennebrew*, 220 Mich App 601, 608; 560 NW2d 354 (1996).

Next, defendant challenges the prosecutor's argument that defendant tried to change his appearance at trial by wearing glasses. Defendant claims that this argument presented a fact not in evidence. However, it is undisputed on appeal that defendant's appearance at trial, by virtue of the glasses, was different than his appearance at the time of identification by the witnesses. While there was no evidence at trial concerning whether defendant needed glasses, the fact that he wore no glasses in the pretrial photographs supported an inference that he did not wear the glasses for everyday wear, which in turn allowed an inference that defendant wore glasses at trial in an attempt to alter his appearance. Because a prosecutor may argue the evidence and all reasonable inferences from the evidence, *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995), we find no plain error in the prosecutor's comments. See *Watson*, 245 Mich App at 588.

Finally, defendant challenges the prosecutor's argument that the victim was an easy target for defendant because, as a cocaine addict, the victim's credibility could easily be impeached by a defense attorney. Defendant claims that in making that argument, the prosecutor essentially testified as an expert in the field of drug culture and drug addiction, and that the prosecutor used that expertise, backed up by the prestige of his office, to assure the jury that defendant was guilty because he fit the profile of a predatory thug in the drug world. A prosecutor may not argue the defendant's guilt based on the prosecutor's special knowledge or the prestige of his office. *People v Reed*, 449 Mich 375, 398-399; 535 NW2d 496 (1995). Additionally, defendant claims that the prosecutor's argument was improper because it was an inflammatory appeal to convict defendant based on sympathy for the victim. A prosecutor may not appeal to the jury to sympathize with the victim. *Watson*, 245 Mich App at 591.

In regard to defendant's claim that the prosecutor testified as an expert in the field of drug culture and addiction, the prosecutor argued three reasons why a drug addict may be targeted by criminals. These reasons could be inferred from the facts placed in evidence. Moreover, the prosecutor's statements were a part of a proper response to defense counsel's attack on the victim's credibility. Accordingly, defendant has not shown that the prosecutor argued defendant's guilt based on his special knowledge or the prestige of his office, nor has defendant shown that the prosecutor appealed to the jury to sympathize with the victim, *Watson*, 245 Mich App at 591. Because each of defendant's claims of prosecutorial misconduct are meritless, defendant has not shown that he was denied a fair trial.

Defendant also argues that his trial counsel was ineffective for failing to object to the prosecutor's arguments discussed above. However, there was no prosecutorial misconduct, and defense counsel was not ineffective for failing to make meritless objections to the prosecutor's arguments. *People v Ackerman*, 257 Mich App 434, 455; 669 NW2d 818 (2003). Defendant has not shown that his attorney's representation fell below an objective standard of reasonableness. See *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000).

Affirmed.

/s/ Kurtis T. Wilder  
/s/ Peter D. O'Connell  
/s/ Kirsten Frank Kelly