

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES MICHAEL MURPHY,

Defendant-Appellant.

UNPUBLISHED

February 28, 1997

No. 195239

Macomb Circuit Court

LC No. 93 002381

Before: Corrigan, C.J., and Doctoroff and R.R. Lamb,* JJ.

MEMORANDUM.

Defendant appeals by right his guilty plea to delivery of between 50 and 224 grams of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii). Defendant also had been charged with conspiracy to deliver between 50 and 224 grams of cocaine, contrary to MCL 750.157; MSA 28.354. In exchange for defendant's guilty plea, the prosecutor agreed to dismiss the conspiracy count, to not seek sentence enhancement based on defendant's prior drug-related conviction, and to assent that the plea was a conditional plea, which would allow defendant to seek appellate review of the court's ruling on the entrapment issue. The court sentenced defendant to a term of imprisonment of ten to twenty years. We affirm.

Defendant alleges that he was denied his constitutionally protected right of confrontation when, during the course of an entrapment hearing held over five days, he was "not allowed to" further cross-examine a police officer. A review of the record¹ reveals that defense counsel failed to recall Officer Hurley to the stand. Defendant may not be heard to complain on appeal about something that his own counsel deemed proper at trial. *People v Barclay*, 208 Mich App 670, 673; 528 NW2d 842 (1995).

Even assuming that the circuit court limited defendant's cross-examination, we find no abuse of discretion. The proper scope of cross-examination is within the trial court's discretion. *People v Morton*, 213 Mich App 331, 334; 539 NW2d 771 (1995). Defense counsel had cross-examined Officer Hurley once already. Considering the strength of the evidence against defendant, the court's failure to *sua sponte* recall Officer Hurley to the stand certainly did not constitute an abuse of discretion.

* Circuit judge, sitting on the Court of Appeals by assignment.

Affirmed.

/s/ Maura D. Corrigan
/s/ Martin M. Doctoroff
/s/ Richard Ryan Lamb

¹ Despite the prosecution's claims to the contrary, the pertinent transcripts were available to this Court.