

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM J. YARBRO,

Defendant-Appellant.

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UNPUBLISHED  
February 19, 2002

No. 223796  
Oakland Circuit Court  
LC No. 99-166427-FH

Before: K.F. Kelly, P.J., and Hood and Doctoroff, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction for one count of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv) and one count of possession with intent to deliver less than five kilograms of marijuana, MCL 333.7401(2)(d)(iii). Defendant was sentenced by the court to serve 1 to 20 years' imprisonment for the possession with intent to deliver cocaine conviction and six months for the marijuana conviction. We affirm.

Defendant contends that the trial court erred when it allowed Daryl Cosby, a police officer involved in the arrest, to testify as an expert for the prosecution. We disagree.

Defendant did not object below to Cosby's qualification as an expert or to his testimony. Thus, this issue is not preserved. In order to avoid forfeiture of an unpreserved issue on appeal, an appellant must show: 1) that an error occurred; 2) "that the error was plain, i.e., clear or obvious," and; 3) that the plain error affected substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

MRE 702 governs the admissibility of expert testimony. In order to be admissible, there must be facts in evidence that require or are subject to examination and analysis by a competent expert, and there must be knowledge in the area that belongs more to an expert than an ordinary person. *People v Ray*, 191 Mich App 706, 707; 479 NW2d 1 (1991). The critical inquiry is whether the testimony will aid the factfinder in making the ultimate decision in the case. *Id.*

Drug-related law enforcement is a recognized area of expertise. *People v Williams (After Remand)*, 198 Mich App 537, 542; 499 NW2d 404 (1993). A police officer may be qualified by his training and expertise to testify on how quantities, packaging, and related items establish a defendant's intent at the time he possessed the drugs. *Id.* In this case, after Cosby was qualified

as an expert, he stated that it was his opinion, based upon the packaging, lack of paraphernalia, and presence of a cell phone and pager, that the drugs in defendant's possession were meant for distribution rather than personal use. This type of expert testimony aided the trier of fact in determining whether the facts of this case supported a finding that defendant had the intent to deliver the drugs found in his possession. No error occurred in this case, and defendant is not entitled to relief.

Next, defendant complains that the prosecutor made improper remarks during closing argument and rebuttal that prejudiced defendant and denied him a fair trial. In reviewing claims of prosecutorial misconduct, this Court examines the remarks in context to determine whether they denied defendant a fair trial. *People v Bahoda*, 448 Mich 261, 266-267; 531 NW2d 659 (1995).

Addressing the prosecutor's comments made during closing argument, we do not agree that the comments were improper vouching for a witness. While a prosecutor is prohibited from vouching for a witness' credibility or suggesting that the government has some special knowledge that a witness will testify truthfully, *People v Knapp*, 244 Mich App 361, 382; 624 NW2d 227 (2001), a prosecutor may argue the evidence and all reasonable inferences arising from it as it relates to his theory of the case. *Bahoda*, *supra* at 282. Here, viewed in context, the prosecutor's comments reflected the evidence produced at trial. The prosecutor did not imply that Cosby was telling the truth, that Cosby could be trusted because he was a prosecution witness, or that she knew personally that Cosby was trustworthy. The comments simply related to Cosby's testimony that, given the absence of paraphernalia, Cosby believed that defendant intended to sell the drugs rather than use them. The prosecutor went on to list Cosby's credentials and to argue that Cosby was experienced. On this record, we reject defendant's claim that these comments constituted misconduct.

Regarding the prosecutor's comments during rebuttal, because defendant failed to object to these comments, appellate review is precluded unless a curative instruction could not have eliminated possible prejudice or failure to consider the issue would result in a miscarriage of justice. *Knapp*, *supra* at 382. Here, it is evident from the context that almost all of the now-challenged comments were made in response to defense counsel's arguments. During closing argument, defense counsel questioned the extent of Cosby's knowledge and experience as an expert, and the prosecutor's comments during rebuttal were made in response to these arguments. Otherwise improper prosecutorial remarks generally do not require reversal if they are responsive to issues raised by defense counsel. *People v Schutte*, 240 Mich App 713, 721; 613 NW2d 370 (2000).

Even if the comments were improper, had defendant raised an objection to this comment during trial a curative instruction could have removed any prejudice flowing from the prosecutor's argument. Moreover, the court instructed the jury that "[t]he lawyer's statements and the arguments are not evidence," that the police officer's testimony should be "judged by the same standards you use to evaluate the testimony of any other witnesses," that the jury did "not have to believe an expert's opinion," and that the jury "should also think about the expert's qualifications, and whether his opinion makes sense when you think about all the other evidence that's in the case." Because the effect of the prosecutor's comment could have been cured by an instruction to the jury and no manifest injustice occurred, reversal is not required in this case. *Knapp*, *supra*.

Finally, defendant asserts that the drugs found in his possession should have been suppressed because the police did not have probable cause to search him. We disagree.

Both the United States and the Michigan Constitutions guarantee the right against unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11; *People v Snider*, 239 Mich App 393, 406; 605 NW2d 502 (2000). Generally, a search conducted without a warrant is unreasonable unless there exists both probable cause and a circumstance establishing an exception to the warrant requirement. *Id.* at 407.

Defendant first contends that Cosby did not have probable cause to make the traffic stop which resulted in defendant's arrest. In order to make a valid traffic stop, a police officer must have an articulable and reasonable suspicion that a vehicle or one of its occupants is subject to seizure for a violation of law. *People v Williams*, 236 Mich App 610, 612; 601 NW2d 138 (1999). Here, Cosby testified that he stopped the vehicle in which defendant was riding because he saw the vehicle impeding traffic. Pursuant to MCL 257.676b, "a person, without authority, shall not block, obstruct, impede, or otherwise interfere with the normal flow of vehicular or pedestrian traffic upon a public street or highway in this state." Combining the fact that impeding traffic is a civil infraction, MCL 257.676b(2), with the fact that Cosby observed the vehicle stopped at a green light, Cosby did have a reasonable and articulable suspicion that a violation of law was occurring. Therefore, the traffic stop was proper.

Defendant then asserts that even if the traffic stop was proper, the subsequent search of defendant was not. Defendant does not dispute that the public interest in the safety of police officers making routine traffic stops justifies them in ordering passengers, as well as drivers, to exit a vehicle. See *People v Armendarez*, 188 Mich App 61, 69-70; 468 NW2d 893 (1991). Nor does defendant assert that the police improperly conducted a patdown search of defendant. To the contrary, an officer who makes a valid investigatory stop may perform a limited patdown search for weapons if the officer has a reasonable suspicion that the individual stopped for questioning is armed and poses a danger to the officer. *People v Custer*, 465 Mich 319, 328; 630 NW2d 870 (2001). Here, Cosby testified that he saw defendant making furtive movements as the vehicle was pulled over. Given this fact, Cosby had a reasonable suspicion that defendant was carrying a weapon, and the patdown search was proper.

Defendant also claims that once the officers determined that the passenger presented no physical threat to them because he had no weapons of any kind, there was no justification for a subsequent search. This argument, however, ignores the fact that after the officers conducted the patdown search, they decided to arrest defendant for lying about his identity. Defendant does not dispute that he initially told police his name was Ernest Yarbrow, while in fact his name is William Yarbrow. Once the decision to arrest defendant was made, the police were permitted to conduct a search incident to the arrest. *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996). Therefore, the searches were not improper, and the trial court did not err when it denied defendant's motion to suppress the evidence.

Affirmed.

/s/ Kirsten Frank Kelly  
/s/ Harold Hood  
/s/ Martin M. Doctoroff