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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-331**

State of Minnesota,
Respondent,

vs.

Antonio Maurice Collins,
Appellant

**Filed December 22, 2009
Affirmed
Stauber, Judge**

Ramsey County District Court
File No. 62CR087687

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Susan Gaertner, Ramsey County Attorney, Mitchell L. Rothman, Assistant County Attorney, Ramsey County Government Center West, Suite 315, 50 West Kellogg Boulevard, St. Paul, MN 55102 (for respondent)

Marie Wolf, Interim Chief Appellate Public Defender, Bridget Kearns Sabo, Assistant Public Defender, Suite 300, 540 Fairview Avenue North, St. Paul, MN 55104 (for appellant)

Considered and decided by Hudson, Presiding Judge; Kalitowski, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

On appeal from his conviction of third-degree controlled substance crime, appellant argues that the prosecutor committed prejudicial misconduct by inflaming the passion and prejudices of the jury during closing argument. We affirm.

FACTS

On June 3, 2008, Officer Tony Holter of the St. Paul Police Department's Narcotics Vice Response Team (NVRT) was working undercover in downtown St. Paul. Officer Holter disguised himself as a patient from St. Joseph's Hospital, wearing dirty clothes and sitting in a wheelchair. Officer Holton also wore an audio and video recording device, and his activities were monitored by other officers.

At approximately 9:10 p.m., Officer Holter maneuvered his wheelchair to a street corner to wait and see if anyone would approach him. Shortly thereafter, he was approached by two men. Officer Holter recognized one of the men as William Elder, and the other man was later identified as appellant, Antonio Collins. According to Officer Holter, appellant suggested that Officer Holter move about 15 feet to the east. After the parties moved, Officer Holter watched appellant dig a plastic bag containing small off-white rocks out of his left boot. Appellant then instructed Officer Holter to meet him on the other side of the street.

Officer Holter crossed the street, where he observed appellant give a small object to Elder. According to Officer Holter, he was then approached by Elder, who held out an off-white, rock-like substance, and asked, "Here you go; you got the money?"

Officer Holter testified that he took the substance, put it in his pocket, and gave Elder a \$20 bill. As Officer Holter began to leave the area, he saw Elder give the money to appellant. Officer Holter then radioed a detailed description of appellant to his surveillance team. Appellant was stopped a few blocks away and used an identification card bearing his name and photograph to identify himself. Subsequent laboratory tests confirmed that the substance Officer Holter purchased from appellant was cocaine.

Appellant was charged with one count of third-degree controlled substance crime. Following a jury trial on the matter, appellant was found guilty of the charged offense. The district court sentenced appellant to 45 months in prison. This appeal followed.

D E C I S I O N

Appellant argues that he is entitled to a new trial because the prosecutor's closing argument inflamed the passions and prejudices of the jury. A prosecutor engages in prejudicial misconduct if the prosecutor's acts have the effect of materially undermining the fairness of a trial. *State v. Fields*, 730 N.W.2d 777, 782 (Minn. 2007). A prosecutor also engages in prejudicial misconduct if the prosecutor violates rules, laws, orders by a district court, or this state's caselaw. *Id.* The reviewing court considers the prosecutor's closing argument as a whole and does not focus on selected phrases taken out of context. *State v. Taylor*, 650 N.W.2d 190, 208 (Minn. 2002). This court will reverse a district court's decision to deny a new trial only if the misconduct, when considered in light of the whole trial, impaired the defendant's right to a fair trial. *Francis v. State*, 729 N.W.2d 584, 590 (Minn. 2007).

Here, the prosecutor began his closing argument as follows:

Dealing with what this case is about from the police perspective, it must be — seem like an insurmountable difficult task at times to try to have a significant impact on street-level drug dealing, to be able to feel like they can make a significant dent in that particular problem.

Appellant objected to the argument, and the district court overruled the objection.

“For prosecutorial misconduct that is objected to at trial, the standard of review varies based on the severity of the perceived misconduct.” *State v. Pendleton*, 759 N.W.2d 900, 911 (Minn. 2009). If the misconduct is less serious, this court determines whether it “likely played a substantial part” in influencing the jury. *State v. Wren*, 738 N.W.2d 378, 390 n.8 (Minn. 2007) (quotation omitted). Although appellant concedes that the alleged misconduct is “somewhat less serious,” he contends that he is entitled to a new trial because the alleged misconduct likely played a substantial part in influencing the jury to convict him.

We disagree. After the district court overruled appellant’s objection, the prosecutor continued his closing argument by detailing NVRT’s tasks and procedures. This information was vital to the state’s case because it ensured the credibility of Officer Holter’s identification of appellant as the seller, which was the primary issue at trial. Thus, when viewed as a whole, it is unlikely that the prosecutor’s statements inflamed the passions and prejudices of the jury. *See Taylor*, 650 N.W.2d at 208 (stating that the reviewing court considers the prosecutor’s closing argument as a whole and does not focus on selected phrases taken out of context).

Even if we were to conclude that the argument constituted misconduct, it is improbable that the comments substantially influenced the jury to convict appellant. The alleged improper statements were very brief, and the jury was specifically instructed that the attorneys' arguments were not evidence. Moreover, the evidence offered by the state at trial was compelling. Officer Holter provided detailed testimony concerning the controlled buy, including a very detailed description of appellant. The jury also viewed a video recording of the sale, and heard testimony that the surveillance officers kept the seller in constant view until he was stopped and identified as appellant. Accordingly, appellant is not entitled to a new trial.

Affirmed.