

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Plaintiff and Appellee,)		
)	Case No. 20050945-CA	
v.)		
)	F I L E D	
Brad Lynn Montgomery,)	(February 1, 2007)	
)		
Defendant and Appellant.)	<table border="1"><tr><td>2007 UT App 24</td></tr></table>	2007 UT App 24
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Eighth District, Vernal Department, 041800116
The Honorable A. Lynn Payne

Attorneys: Bryan Sidwell, Vernal, for Appellant
Mark L. Shurtleff and Matthew D. Bates, Salt Lake
City, for Appellee

Before Judges Bench, Billings, and Davis.

BENCH, Presiding Judge:

Defendant Montgomery appeals his convictions for distribution of a controlled substance, a first degree felony, and possession of drug paraphernalia, a class B misdemeanor. See Utah Code Ann. § 58-37-8 (Supp. 2006); Utah Code Ann. § 58-37a-5 (2002). Montgomery contends that the trial court abused its discretion by failing to declare a mistrial after the prosecutor allegedly committed prosecutorial misconduct. See State v. Fixel, 945 P.2d 149, 151 (Utah Ct. App. 1997) ("The trial court's rulings on whether the prosecutor's conduct merits a mistrial will not be overturned absent an abuse of discretion." (quotations and citation omitted)). Prior to the trial, the prosecutor informed Montgomery that the State would not rely on the evidence seized from Montgomery at his arrest. However, during opening statements, the prosecutor stated that the arresting "officers . . . found some paraphernalia on [Montgomery's] person consistent with methamphetamine use."

"Prosecutorial misconduct occurs when the prosecutor's comments call the jurors' attention to matters not proper for their consideration and when the comments have a reasonable likelihood of prejudicing the jury by significantly influencing

its verdict." State v. Reed, 2000 UT 68, ¶18, 8 P.3d 1025 (quotations and citation omitted). We will reverse only "[i]f the prejudice is such that there is a reasonable likelihood the jury would have reached a more favorable result absent the comments." Id. (quotations and citation omitted). The State presented evidence to show that an informant purchased a methamphetamine-filled balloon from Montgomery. This, along with other evidence, established Montgomery's guilt of distributing a controlled substance and possession of drug paraphernalia. Because proof of Montgomery's guilt is strong, the prosecutor's comments were not prejudicial. See State v. Troy, 688 P.2d 483, 486 (Utah 1984) ("If proof of a defendant's guilt is strong, the challenged . . . remark will not be presumed prejudicial." (quotations and citation omitted)).

Montgomery also argues that the trial court erred by rejecting his proposed jury instruction number 2. "Whether the trial court's refusal to give a proposed jury instruction constitutes error is a question of law, which we review for correctness." State v. Hamilton, 827 P.2d 232, 238 (Utah 1992). We review jury instructions "in their entirety and will affirm when the jury instructions taken as a whole fairly instruct the jury on the law applicable to the case." State v. Ontiveros, 835 P.2d 201, 205 (Utah Ct. App. 1992). Although the court rejected Montgomery's proposed jury instruction number 2, jury instruction number 7 conveyed essentially the same information. Both instructions stated that the jury may consider a prior felony conviction when determining a witness's credibility. Because "a defendant is not entitled to an instruction which is redundant or repetitive of principles enunciated in other instructions given to the jury," the trial court did not err in rejecting jury instruction number 2. State v. Parker, 2000 UT 51, ¶19, 4 P.3d 778 (quotations and citation omitted).

Finally, Montgomery asserts that the trial court erred by allowing Detective Campbell to read from the police report he prepared for trial during the State's redirect examination. "We review evidentiary rulings for a clear abuse of discretion." State v. Morrell, 803 P.2d 292, 297 (Utah Ct. App. 1990). Montgomery argues that the report is inadmissible hearsay. However, Montgomery introduced the report during his cross-examination of Detective Campbell, questioning him about the second paragraph. On redirect, the State asked the detective to read the first and second paragraphs of the report to clarify questions addressed in the cross-examination. Rule 106 of the Utah Rules of Evidence provides that "[w]hen a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part of any other writing or recorded statement which ought

in fairness to be considered contemporaneously with it." Utah R. Evid. 106. Because Montgomery introduced the police report and the State merely used the report to clarify issues raised by Montgomery, the trial court did not abuse its discretion.

Accordingly, we affirm.

Russell W. Bench,
Presiding Judge

WE CONCUR:

Judith M. Billings, Judge

James Z. Davis, Judge