

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20061147-CA
v.)	
)	F I L E D
Denny Lee Moore,)	(September 13, 2007)
)	
Defendant and Appellant.)	2007 UT App 302

Third District, West Jordan Department, 041400410
The Honorable Royal I. Hansen

Attorneys: Linda M. Jones and Stephen W. Howard, Salt Lake City,
 for Appellant
 Mark L. Shurtleff and Joanne C. Slotnik, Salt Lake
 City, for Appellee

Before Judges Bench, Greenwood, and McHugh.

PER CURIAM:

Denny Lee Moore appeals his conviction of possession of an incendiary device. He asserts that the trial court erred in denying Moore's motion for a mistrial based on prosecutorial misconduct. We affirm.

Appellate courts review rulings on motions for a mistrial based on prosecutorial misconduct for abuse of discretion. See State v. Reed, 2000 UT 68, ¶18, 8 P.3d 1025. "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." Id. "In assessing whether a statement constitutes prosecutorial misconduct, the statement must be viewed in light of the totality of the evidence presented at trial." State v. Fixel, 945 P.2d 149, 151 (Utah Ct. App. 1997). Where the evidence against a defendant is strong, a challenged comment will not be presumed to be prejudicial. See State v. Troy, 688 P.2d 483, 486 (Utah 1984). Thus, the trial court's decision will be reversed only if there is a reasonable likelihood that the jury would have reached a more favorable result absent the comments. See Reed, 2000 UT 68 at ¶18.

Moore has not shown that, absent the challenged comments, there is a reasonable likelihood that the jury would have reached a more favorable verdict. Given the strength of the evidence against Moore, the comments were not prejudicial. The evidence was sufficient to establish that Moore knowingly possessed the explosives. When officers asked Moore if he had dynamite, he responded affirmatively and took the officers directly to where he kept the dynamite and other explosive devices. Moore's admission and conduct demonstrated his knowledge and possession of the explosives. Because the evidence demonstrated that Moore knowingly possessed the explosives, Moore has not shown that the prosecutor's comments regarding recklessness or danger significantly affected the jury's verdict. Thus, the trial court did not abuse its discretion when it denied Moore's motion for a mistrial.

Affirmed.

Russell W. Bench,
Presiding Judge

Pamela T. Greenwood,
Associate Presiding Judge

Carolyn B. McHugh, Judge