STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRAUDILIO TORRES BENITEZ,

Defendant-Appellant.

UNPUBLISHED
September 16, 1997

No. 176232
Genesee Circuit Court
LC No. 93-048433-FH

Before: Holbrook, Jr., P.J., and MacKenzie and Murphy, JJ.

PER CURIAM.

Defendant was convicted by a jury of possession of between 225 and 649 grams of cocaine, MCL 333.7403(2)(a)(ii); MSA 14.15(7403)(2)(a)(ii). Because he had a prior drug conviction, defendant was sentenced to an enhanced prison term of 25 to 45 years pursuant to MCL 333.7413; MSA 14.15(7413). He appeals as of right and we affirm.

First, defendant argues that he was denied a fair trial by a comment made by the trial court in reference to lottery winnings claimed by defendant. We disagree.

Defendant testified that the $29,000 recovered from his home by police was accumulated through a perfume business, pig farming, and lottery winnings. At one point, defendant testified that he won upwards of $17,000 through the lottery. Defendant's briefcase and its contents were introduced into evidence. On re-direct examination, defendant bolstered his testimony by producing lottery receipts. The following exchange occurred:

> [DEFENSE COUNSEL]: Now, Braudilio, I'd ask you to identify a -- these are records taken from the briefcase, and what are those records, Braudilio?
>
> [DEFENDANT (THE WITNESS)]: These are Lotto, the five thousand hundred [sic], five thousand more. These are the five thousand --
>
> INTERPRETER PAUL: The Lotto that you win?

THE WITNESS: Yeah.

INTERPRETER PAUL: The five thousand?

THE WITNESS: This a five thousand.

INTERPRETER PAUL: The Lotto that you win.

THE WITNESS: This two-fifty.

INTERPRETER PAUL: Two hundred fifty.

THE WITNESS: This eighty dollar.

INTERPRETER PAUL: Eighty dollars.

THE WITNESS: Forty-one.

INTERPRETER PAUL: Forty-one dollars.

THE WITNESS: Two -- two-eighty.

INTERPRETER PAUL: Two hundred and eighty.

THE WITNESS: Eighty.

INTERPRETER PAUL: Eight [sic].

THE WITNESS: Two-o-eight.

INTERPRETER PAUL: Two-o-eight.

THE WITNESS: Forty-one.

INTERPRETER PAUL: Forty-one dollars.

THE COURT: He's either the luckiest guy alive or you've spent a lot of money on the Lotto.

THE WITNESS: Two-o-eight.

INTERPRETER PAUL: Two-o-eight.

[DEFENSE COUNSEL]: Well, your Honor -- That's all right, Braudilio.

THE WITNESS: Forty-one.

[DEFENSE COUNSEL]: I -- the jury can look at the Lotto receipts.

Defendant did not object to the trial court's interjection. In the absence of an objection, this Court may review the matter if manifest injustice would result from the failure to do so. *People v Paquette*, 214 Mich App 336, 340-341; 543 NW2d 342 (1995). While the trial court's remark was improper, it does not cross the line of judicial impartiality and rise to the level of manifest injustice. In light of the context in which the comment was made, the absence of an objection, the evidence in favor of defendant's possession of cocaine, and the fact that the trial court instructed the jury to disregard any comments or impressions made by the trial court concerning the evidence presented, reversal is not required.

Next, defendant claims that the trial court erred by not granting his motion for mistrial after the prosecution referred to evidence defense counsel was not previously made aware of. We disagree. Mistrial is an extreme remedy, and we do not consider the prosecution's conduct to be so egregious as to warrant a mistrial. As for imposition of a lesser sanction, defense counsel only sought a mistrial, and did not request any other sanction. We find no error in the trial court's refusal to sua sponte impose a sanction.

Next, defendant claims that the trial court improperly admitted evidence such as marihuana and firearms seized from his home. Defendant argues that such evidence was not relevant to whether he possessed the cocaine in question. While such drug profile evidence is of questionable admissibility, see *People v Humphreys*, 221 Mich App 443, 447; __ NW2d __ (1997) citing *People v Hubbard*, 209 Mich App 234; 530 NW2d 130 (1995), we are of the opinion that any error was harmless in light of the properly admitted evidence pertaining to defendant's possession of the cocaine in question.

Next, defendant claims that the evidence seized from his home should have been suppressed because the evidence was outside the scope of the search warrant. We disagree. A review of a copy of the warrant reveals that the challenged evidence was clearly within the scope of the warrant.

Last, defendant argues that the trial court erred in refusing to read a requested jury instruction. We find no error. Defendant requested a modified version of CJI2d 4.14 that deals with tracking dogs, and analogized a tracking dog, which was not used in this case, to a drug-sniffing dog, which was used in this case. We agree that there is a difference between the types of dogs, and this Court has expressed confidence in the reliability of drug-sniffing dogs for some purposes, *People v Clark*, 220 Mich App 240, 241-244; 559 NW2d 78 (1996). As a result, we find no abuse of discretion in the trial court's refusal to give the requested instruction.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Barbara B. MacKenzie
/s/ William B. Murphy