

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RODERICK MAY,

Defendant-Appellant.

UNPUBLISHED

August 25, 2005

No. 252930

Wayne Circuit Court

LC No. 03-007905

Before: Zahra, P.J., and Gage and Murray, JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted of two counts of possession with intent to deliver less than fifty grams of cocaine and heroin, MCL 333.7401(2)(a)(iv). He appeals as of right, and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A surveillance officer observed defendant engage in two apparent drug transactions at the corner of Cass Avenue and Henry Street in Detroit, an area known for drug trafficking. Although the evidence was slightly confusing on this point, one arrest team officer unequivocally stated that when the team arrived defendant tried to hand off a package to Kenneth Ponder, but dropped it. The package recovered was a baggie holding what was stipulated to be ten pieces of rock cocaine and nineteen little packages of heroin.

Defendant argues that the prosecutor made an improper civic duty argument by stating, in essence, that defendant had been the target or focus of this particular investigation and that the police were trying to curb the drug trade at this location so that it would not interfere with the lives of the people who lived, worked and went to school there. Defendant suggests that the remark was intended to play on the average citizen's "desire to eliminate the narcotics traffic," citing *People v Williams*, 65 Mich App 753; 238 NW2d 186 (1975), and asserts that such an appeal to social fears is improper. Defendant acknowledges that he did not object to the remarks. Thus, review is for a miscarriage of justice. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001).

A prosecutor may not urge jurors to convict a defendant as part of their civic duty. *People v Abraham*, 256 Mich App 265, 273; 662 NW2d 836 (2003). These arguments are not tolerated because they inject issues into the trial that are broader than guilt or innocence and encourage jurors to suspend their own powers of judgment. *Id.* However, otherwise improper

prosecutorial remarks might not require reversal if they address issues raised by defense counsel. *People v Schutte*, 240 Mich App 713, 721; 613 NW2d 370 (2000).

We conclude that, in context, the remarks were not improper and that, in any event, they were responsive to defense counsel's closing argument. The prosecutor was not appealing to the jury's social fears or urging them to convict solely to clean up narcotic trafficking. It had been established during trial that this area was known for drug trafficking. The prosecutor was simply acknowledging the point made in defendant's closing argument that defendant was the focus or target of the police investigation in what had been referred to during trial as "an open area drug market."

Affirmed.

/s/ Brian K. Zahra

/s/ Hilda R. Gage

/s/ Christopher M. Murray