

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARYL LAWRENCE ESTELLE,

Defendant-Appellant.

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UNPUBLISHED

January 25, 2002

No. 222406

Wayne Circuit Court

LC No. 98-007808

Before: Hood, P.J., and Murphy and Markey, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of possession with intent to deliver 650 or more grams of cocaine, MCL 333.7401(2)(a)(i). He was sentenced to twenty-five to forty years' imprisonment and appeals as of right. We affirm.

Defendant was pulled over for a traffic violation. Police officers retrieved defendant's license and registration. One of the officers, Darrin Grandison, knew defendant through an informal motorcycle club. Upon determining that there were no outstanding warrants for defendant, the police officers decided to give defendant a verbal warning. When the officers were returning to defendant's vehicle, he pulled away from the stop and fled. Joseph Deeby saw defendant pass by with police in pursuit. Defendant threw a satchel from his vehicle. Deeby retrieved the satchel and gave it to police. The name Alyssa Estelle was written on the satchel. Six plastic baggies were found in the satchel. Each baggie contained approximately 125 grams of cocaine. Defendant was arrested and placed in the patrol vehicle. After defendant was removed from the vehicle, forty-eight packets of pink paper were discovered. The contents of the pink packets was heroin.

Defendant first argues that the evidence must be suppressed because the affidavit in support of the search warrant was without probable cause and did not identify, with particularity, the place to be searched and the items to be seized. We disagree. A search warrant may be issued on a showing of probable cause supported by oath or affirmation. *People v Nunez*, 242 Mich App 610, 612; 619 NW2d 550 (2000). "Probable cause sufficient to support issuing a search warrant exists when all the facts and circumstances would lead a reasonable person to believe that the evidence of a crime or the contraband sought is in the place requested to be searched." *People v Ulman*, 244 Mich App 500, 509; 625 NW2d 429 (2001), quoting *People v Brannon*, 194 Mich App 121, 132; 486 NW2d 83 (1992). When assessing a magistrate's probable cause determination, this Court examines the search warrant and underlying affidavit in

a commonsense and realistic manner, paying deference to the magistrate's conclusion that probable cause existed. *Nunez, supra*.

In the present case, the totality of the circumstances supported the magistrate's finding that there was probable cause to search the home. Although defendant alleges that he did not reside in the searched home, it was listed as his address on his Michigan driver's license and vehicle registration at the time of his arrest. Further, the amount and packaging of the cocaine found in defendant's possession supported a finding that it would be prepared and manufactured for sale at a separate location. Moreover, contrary to defendant's arguments on appeal, representations based upon an affiant's experience may be considered in determining whether probable cause exists. *People v Darwich*, 226 Mich App 635, 638-640; 575 NW2d 44 (1997). Here, the quantity and packaging of the cocaine in defendant's possession, coupled with the attesting officer's experience that drug traffickers often keep evidence of illicit activity in their homes, provided a sufficient basis for the magistrate's finding of probable cause to search the listed residence. *Nunez, supra*. Defendant's contention, that the search warrant failed to state with particularity the person, places, and things to be searched, is without merit. The requirement that the items be related to drug trafficking placed an adequate limit on the officers' discretion. *In re Forfeiture of \$25,505*, 220 Mich App 572, 582; 560 NW2d 341 (1996).

Defendant next argues that the trial court improperly admitted other acts evidence in the form of narcotics paraphernalia. We disagree. We review the trial court's decision to admit evidence for an abuse of discretion. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). The evidence at issue led to the inference that defendant sold or intended to sell the drugs he possessed and was utilized to establish the elements of the charged offense. See *People v Gould*, 61 Mich App 614, 625; 233 NW2d 109 (1975). Accordingly, defendant's attempt to categorize the evidence as MRE 404(b) evidence is without merit.

Defendant next argues that the prosecutor repeatedly engaged in improper conduct that denied him a fair trial. We disagree. We review claims of prosecutorial misconduct on a case by case basis, examining the remarks in context, to determine whether the defendant received a fair and impartial trial. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001). Unpreserved claims of prosecutorial misconduct are reviewed for plain error. *Id.* To avoid forfeiture of an unpreserved claim, the defendant must demonstrate plain error that was outcome determinative. *Id.* "No error requiring reversal will be found if the prejudicial effect of the prosecutor's comments could have been cured by a timely instruction." *Id.* quoting *People v Schutte*, 240 Mich App 713, 720; 613 NW2d 370 (2000).

The prosecutor is free to argue the evidence and all reasonable inferences from the evidence as it relates to the theory of the case. *People v Knapp*, 244 Mich App 361, 381-382 n 6; 624 NW2d 227 (2001). Review of the remarks in context reveals that the prosecutor's reference to defendant as a dope dealer was proper argument based on the evidence and all reasonable inferences there from in light of the amount of the drugs, the packaging, and the materials found in defendant's listed residence. *Gould, supra* at 624-625. The prosecutor's reference to the motion to suppress occurred in the context of a response to an objection by defense counsel and did not deprive defendant of his right to a fair trial. *Watson, supra*. Likewise, the prosecutor's sarcastic comment to defendant regarding the death of his acquaintance was immediately withdrawn, and the trial court instructed the jury that the prosecutor's comments were not evidence. Defendant's argument regarding commentary on the credibility of other witnesses is

without merit. Lastly, we note that while the prosecutor's comment in rebuttal regarding the time spent on the facts of the case was unwarranted, there was no objection to the comment, the trial court instructed the jury that arguments of counsel were not evidence, and the comment was not outcome determinative. *Watson, supra*.

Defendant next argues that he was deprived of his due process rights when the trial court imposed a thirty minute time limitation on closing arguments. We disagree. The trial court may impose reasonable limitations on closing arguments, MCR 6.414(E), and we review the trial court's limitations for an abuse of discretion. *People v Hence*, 110 Mich App 154, 172; 312 NW2d 191 (1981). Although defendant asserts that his trial counsel did not have adequate time to cover every point within the time limit imposed, the record reveals that the case was not unusually complex. Defendant did not deny that drugs were found in a satchel that he had thrown from his vehicle. Rather, defendant asserted that the drugs belonged to a now deceased acquaintance who asked him for a favor. On appeal, defendant has failed to identify any points that he was unable to cover as a result of the time limitations. In fact, defense counsel persuaded the jury to acquit defendant of a charge that involved heroin found in the police vehicle. Under the circumstances, we cannot conclude that the trial court abused its discretion by imposing the time limitations. *Hence, supra*.

Defendant next argues that the trial court abused its discretion by allowing the prosecutor to cross-examine and impeach defendant's wife regarding a collateral issue using improper rebuttal testimony. We disagree. The trial court's decision regarding rebuttal testimony will not be disturbed absent an abuse of discretion. *People v Humphreys*, 221 Mich App 443, 446; 561 NW2d 868 (1997). "Rebuttal evidence is limited to refuting, contradicting, or explaining evidence presented by the opposing party." *Id.* citing *People v Leo*, 188 Mich App 417, 422; 470 NW2d 423 (1991). Evidence introduced on rebuttal must relate to a substantive, not a collateral matter. *Humphreys, supra*.

The prosecutor argued that defendant was a "dope dealer" based on the amount of the drugs in his possession and the materials found at his listed residence. On direct examination, defendant's wife was asked if defendant was a dope dealer, and she denied that he was. On cross-examination, the prosecutor asked her if she had told police that defendant had sold drugs for ten years. Defendant's wife denied ever making such a statement. Defendant opened the door to the cross-examination and rebuttal testimony by eliciting on direct examination the statement that defendant was not a drug dealer. In light of this questioning, the scope of cross-examination was proper. The cross-examination and rebuttal testimony did not address a collateral matter, but rather the central issue in question. Specifically, whether defendant possessed drugs with the intention to deliver or whether defendant was an unwitting drug courier for an acquaintance. *Humphreys, supra*. Defendant also suggests that the prosecutor violated a discovery order by failing to divulge the alleged statements by defendant's wife to police officers. However, defendant does not identify the scope of any applicable discovery in this case, or identify what information, if any, was actually provided by the prosecution. Defendant has failed to identify any section of MCR 6.201 that required the disclosure. Accordingly, we conclude that this issue is not properly before us. *People v Leonard*, 224 Mich App 569, 588; 569 NW2d 663 (1997).

Defendant next argues that he was denied a fair trial because of the injection of improper opinion testimony by prosecution witnesses. We disagree. Review of the record reveals that the

testimony cited by the defense was injected as part of an unresponsive, volunteered statement by the witness to an otherwise proper question. Generally, an unresponsive, volunteered answer to a proper question is not grounds for a mistrial. *People v Haywood*, 209 Mich App 217, 228; 530 NW2d 497 (1995). In this case, following one of the responses, the prosecutor admonished the witness to answer only the question posed. Following the second nonresponsive answer, the trial court instructed the jury to disregard the testimony. Under the circumstances, the trial court properly denied defendant's request for a new trial.

Affirmed.

/s/ Harold Hood  
/s/ William B. Murphy  
/s/ Jane E. Markey