

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
January 30, 2014

v

DESRICK JAMAR BROWN,  
Defendant-Appellant.

No. 313147  
Wayne Circuit Court  
LC No. 12-004291-FC

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Before: SERVITTO, P.J., and MURRAY and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of assault with intent to murder, MCL 750.83, armed robbery, MCL 750.529, assault with a dangerous weapon (felonious assault), MCL 750.82, possession of a firearm by a felon (felon-in-possession), MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced, as a fourth habitual offender, MCL 769.12, to 20 to 35 years for the assault with intent to murder conviction, 20 to 35 years for the armed robbery conviction, 2 to 15 years for the felonious assault conviction, 2 to 15 years for the felon-in-possession conviction, and two years for the felony-firearm conviction. We affirm.

Defendant first argues that the prosecutor committed misconduct when she attempted to admit evidence of defendant's aliases through the questioning of Detroit Police Officers Aref Algarrafi and Derrick Griffin, and by injecting innuendo of defendant's aliases into her rebuttal closing argument.

A preserved issue of prosecutorial misconduct is reviewed "de novo to determine whether the defendant was denied a fair and impartial trial." *People v Bennett*, 290 Mich App 465, 475; 802 NW2d 627 (2010). An unpreserved issue of prosecutorial misconduct is reviewed for "plain error that affected [the defendant's] substantial rights." *People v Thomas*, 260 Mich App 450, 453-454; 678 NW2d 631 (2004). This Court will only reverse if it determines that "although defendant was actually innocent, the plain error caused him to be convicted, or if the error seriously affected the fairness, integrity, or public reputation of judicial proceedings, regardless of his innocence." *Id.* (quotation marks and citation omitted).

"The test for prosecutorial misconduct is whether, after examining the prosecutor's statements and actions in context, the defendant was denied a fair and impartial trial." *People v Hill*, 257 Mich App 126, 135; 667 NW2d 78 (2003). Generally, "[p]rosecutors are accorded

great latitude regarding their arguments and conduct.” *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995) (quotation marks and citation omitted). It is proper for the prosecution to “argue from the evidence and inferences to be drawn therefrom . . .” *People v Stacy*, 193 Mich App 19, 37; 484 NW2d 675 (1992). However, the prosecution “may not inject unfounded prejudicial innuendo into a trial.” *People v Dobek*, 274 Mich App 58, 78; 732 NW2d 546 (2007).

Defendant makes the unpreserved argument that the prosecutor committed misconduct when she attempted to elicit evidence from Algarrafi regarding defendant’s aliases during the following exchange:

*Q.* Okay. And what name did he give you at first?

*A.* Darnell Johnson.

*Q.* And so you had a picture so you knew who you were looking for?

*A.* Yes.

*Q.* And the name next to that was, the picture that you had and the name that you were looking for, what was that name?

*A.* Desrick Brown.

*Q.* Did he have any other aliases?

*A.* Street name of Desi.

*Q.* Okay. And were you aware of a Damond Brown? Did he also use that?

*A.* Yea, Damond Brown.

These questions specifically elicited information regarding defendant’s aliases. This Court has held that “[a]lthough there is a split of authority in this Court regarding whether evidence of a defendant’s use of an alias can be used to impeach credibility, evidence of a defendant’s use of an alias is admissible to establish identity.” *People v Phillips*, 217 Mich App 489, 497; 552 NW2d 487 (1996). Algarrafi was an identification witness who was able to identify defendant as the person he was seeking in connection with the armed robbery at issue, and he in fact engaged defendant in a traffic stop and arrested him. Further, defendant gave Algarrafi the alias “Darnell Johnson” when he was first pulled over. This Court has held that “because defendant was known to the prosecution’s . . . witnesses under various names, testimony concerning defendant’s use of those names was necessary to show that defendant was the person to whom the testimony pertained.” *People v Griffis*, 218 Mich App 95, 99; 553 NW2d 642 (1996) (quotation marks and citation omitted). Thus, the alias evidence was admissible for purposes of establishing defendant’s identity as the individual Algarrafi was looking for and pulled over.

However, even if the alias evidence was not admissible, defendant still cannot show prosecutorial misconduct. This Court has been clear that the prosecution's "good-faith effort to admit evidence does not constitute misconduct." *People v Brown*, 294 Mich App 377, 383; 811 NW2d 531 (2011). The prosecutor was attempting to elicit this evidence to establish defendant's identity, and in doing so, used good faith in conducting direct examination of Algarrafi. Defendant has not shown "bad faith," and this line of questioning did not constitute prosecutorial misconduct. See *id.* (holding that the defendant must establish that the prosecutor exercised bad faith in attempting to admit evidence). Further, defendant cannot show prejudice because two eyewitnesses, Ronte Kleckley and Driton Palushi, identified defendant as the individual with the gun, and they both had seen defendant around the neighborhood before the incident.

Second, defendant challenges the prosecution's questioning of Griffin. Because this specific questioning was objected to by defendant, it is preserved for appeal, and our review is de novo. See *Bennett*, 290 Mich App at 475. Defendant specifically challenges Griffin's following testimony regarding the photo array that was shown to Kleckley, the victim of the armed robbery:

Q. Did he [Kleckley] pick somebody on that day?

A. Yes, he did.

Q. And who did he pick?

A. He picked Damond J. Brown.

Q. And who did you know Damond J. Brown to be?

A. Also known as Desrick Brown.

Again, defendant cannot show that the prosecutor committed misconduct. As previously stated, the prosecutor simply must use "good faith" in attempting to admit evidence. *Brown*, 294 Mich App at 383. The prosecutor did use good faith in attempting to admit the alias evidence, especially because Algarrafi's testimony on defendant's aliases had previously been admitted. Kleckley had identified a picture from the photo array as the individual who robbed him, and that picture was associated with the name Damond J. Brown. The prosecutor elicited testimony from Griffin regarding Damond J. Brown in order to clarify whether defendant was the individual in the photograph. Thus, this evidence could have been admissible, as it was used for identification purposes. *Phillips*, 217 Mich App at 497. However, defendant objected to this evidence as irrelevant, and the court sustained the objection. Even though the evidence was deemed inadmissible, the prosecutor exercised good faith in her attempt to admit the evidence, and thus, did not commit prosecutorial misconduct.

Defendant's final challenge is to the prosecutor's reference to defendant's aliases in her rebuttal closing argument. Specifically, the prosecutor stated:

[T]here's one officer that came in here and testified and he was the arresting officer[,] and he told you who he was looking for. He told you that he was looking for Desrick Brown. Not only did he tell you that, he told you that he had

aliases and he told you every single name that Desrick Brown uses. He told you he goes by Desi. He goes by Damond Brown. He also told you he goes by the name of Darrell Johnson and that's the name that he tried to give him when he first tried to arrest him. When he stopped him that's the name he gave. Don't forget about that officer.

The prosecutor only refers to Algarrafi's testimony, which was admitted as evidence, and a prosecutor can argue from the evidence and inferences from that evidence. *Stacy*, 193 Mich App at 37. The prosecutor did not commit misconduct by mentioning defendant's aliases in her rebuttal closing argument. Further, defendant cannot show that his right to a fair trial was prejudiced because any potential prejudice was cured by the court's jury instruction. In *Dobek*, 274 Mich App at 66 n 3, we held that the presence of jury instructions stating that "statements and arguments by counsel were not evidence" eliminated any possible prejudice to the defendant. Similarly here, the lower court instructed the jury that "[t]he lawyer's statements and arguments are not evidence. They're only meant to help you understand the evidence and each side's legal theories." Defendant's argument on this point is without merit.

Next, defendant argues that his trial counsel was ineffective for failing to object to each instance of alleged prosecutorial misconduct. "Whether a person has been denied effective assistance of counsel is a mixed question of fact and constitutional law." *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). A trial court's "findings of fact are reviewed for clear error . . ." and "[q]uestions of constitutional law are reviewed by this Court de novo." *Id.*

Defendant argues that counsel was ineffective for failing to object to the various instances of prosecutorial misconduct, specifically the prosecutor's two attempts to elicit information from witnesses regarding defendant's aliases for the purposes of identification, and the prosecutor's insertion of these aliases in her rebuttal closing argument. However, as previously determined, the prosecutor did not commit misconduct in any of these instances. And, when a prosecutor does not commit misconduct, "any objection to the prosecutor's arguments would have been futile. Counsel is not ineffective for failing to make a futile objection." *Thomas*, 260 Mich App at 457.

Affirmed.

/s/ Deborah A. Servitto  
/s/ Christopher M. Murray  
/s/ Mark T. Boonstra