

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KEITH HOLLAND,)
) No. 262, 2004
 Defendant Below,)
 Appellant,) Court Below: Superior Court
 v.) of the State of Delaware in
) and for Kent County
)
 STATE OF DELAWARE,) Cr. ID. No. 0305004020
)
 Plaintiff Below,)
 Appellee.)

Submitted: December 8, 2004

Decided: January 18, 2005

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

ORDER

This 18th day of January, 2005, on consideration of the parties' briefs, it appears to the Court that:

1. Keith Holland appeals his drug conviction in the Superior Court, claiming the prosecutor's closing remarks prejudiced him before the jury, and thus denied him a fair trial. Holland argues that the prosecutor improperly vouched for the investigating officer's credibility when he stated that the latter's testimony "held up," was "consistent," and was "laden with certainty." We find that Holland was not prejudiced because the prosecutor ultimately linked his comments to the evidence presented at trial. Accordingly, we affirm.

2. As part of a February 2003 undercover drug investigation, Delaware State Police Officer Donald Boulerice approached an individual in a Dover neighborhood and asked to purchase crack-cocaine. Boulerice recognized Holland as the seller. After police completed the undercover operation, they arrested Holland for delivery of a controlled substance and another drug-related charge.

3. At his March 2004 jury trial, Holland testified on his own behalf and denied that he sold drugs to Boulerice. Holland instead claimed that he drove his girlfriend to the hospital on the day in question. Several defense witnesses also stated that Holland left the hospital later that day to bring his children to a restaurant. Following trial, the jury found Holland guilty of the delivery charge.¹

4. During closing statements, both parties addressed Holland's identification defense strategy. Defense counsel argued:

[T]his is a case where Detective Boulerice has come before you and been asked . . . whether or not he was certain that Mr. Holland was the man that he dealt with, and he responded in the affirmative each time. . . . So when [the prosecutor] suggested to you that bias is something you need to consider, he is absolutely right. Because Detective Boulerice is in a very competitive business. His job is to arrest people and testify against them at trial. . . . So that is another aspect of bias you need to consider when you go back in the jury room.

The prosecutor countered in his rebuttal summation:

[J]ust as I am doing my job by pointing out the biases and bring[ing] those to your attention, [defense counsel] is doing his job representing

¹ *State v. Holland*, Del. Super., ID No. 00210815 (Mar. 17, 2004).

his client and bringing out what he says are these biases that the officer has.

But ladies and gentlemen, think back about this. Whose story held up? Whose story was consistent? Whose story was just laden with certainty? It is Officer Boulerice.

5. Holland then objected, claiming the State was improperly vouching for Boulerice's credibility. Outside the jury's presence, the trial judge noted that both parties were starting to emphasize opinion over argument, but allowed the prosecutor to clarify his previous comments by connecting them to the evidence presented. As he had done before closing statements, the trial judge again instructed the jury on the inadmissibility of attorney opinions once counsel concluded summations.

6. We have held it is unprofessional conduct for a prosecutor "to express his personal belief or opinion as to the truth or falsity of any testimony or evidence. . . ." ² Only comments that "prejudicially affect the substantial rights" of the accused, however, compromise the integrity of the verdict and the fairness of the trial. ³ Although "[s]triking the balance between permissible and impermissible comment by a prosecutor[] calls for the exercise of a sound discretion by the trial

² *Hughes v. State*, 437 A.2d 559, 570 (Del. 1981), citing *United States v. LeFevre*, 483 F.2d 477, 479 (3d Cir. 1973).

³ *Daniels v. State*, 859 A.2d 1008, 1011 (Del. 2004).

judge,”⁴ we review a claim of prosecutorial misconduct *de novo* to determine whether the conduct was improper or prejudicial.⁵

7. The prosecutor made his statements in response to defense counsel’s own credibility-based comments. The trial judge, acting within his discretion, found that the prosecutor’s comments were supported by and referred to the evidence and allowed the prosecutor to link his remarks to the officer’s testimony. He also instructed the jury a second time that attorney opinions were not evidence they could consider. Based on our review of the record, we find the prosecutor’s remarks did not prejudice Holland

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁴ *Jensen v. State*, 482 A.2d 105, 118 (Del. 1984) (capitalization altered), *citing Hughes v. State*, 437 A.2d 559, 571 (Del. 1981).

⁵ *Hunter v. State*, 815 A.2d 730 (Del. 2002).