

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-3198  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DARRELL MCDONALD,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
USDC No. CR-92-325-L  
- - - - -  
(November 1, 1993)

Before POLITZ, Chief Judge, and SMITH and WIENER, Circuit Judges.

PER CURIAM:\*

In reviewing a claim of prosecutorial misconduct in the context of closing argument, reversible error will result only where the argument is both improper and harmful. United States v. Sanchez, 961 F.2d 1169, 1176 (5th Cir.), cert. denied, 113 S.Ct. 330 (1992). This Court must consider "1) the magnitude of the prejudicial effect of the statements; 2) the efficacy of any cautionary instruction; and 3) the strength of the evidence of the defendant's guilt." Id. (quoting United States v.

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\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Lowenberg, 853 F.2d 295, 302 (5th Cir. 1988)). Reversal for improper prosecutorial statements is required only where the statements cast "`serious doubt on the jury's verdict.'" United States v. Lokey, 945 F.2d 825, 838 (5th Cir. 1991) (quoting United States v. Rocha, 916 F.2d 219, 234 (5th Cir. 1990), cert. denied, 111 S.Ct. 2057 (1991)). Absent an abuse of discretion, the district court's ruling will not be set aside on appeal. Rocha, 916 F.2d at 234. During its closing rebuttal argument, the Government stated that:

[t]he last thing Mr. Mosca says was that the Government shouldn't pay money to people like that. Well, from the evidence we have in this case, the Government got a pretty good deal for its money. A few hundred dollars and they got drug dealers off the street.

Mr. Mosca makes something out of about how nobody's gone to court before of all the other drug dealers that were caught with this confidential informant's help. Well, ladies and gentlemen, we had evidence that these people all pled guilty before because they did it and they admitted it.

Defense counsel objected, but did not request a curative instruction. The judge did not rule, but responded, "[p]roceed." This amounts to a denial of the objection.

Forstall "Bill" Burrows, the confidential informant in the case, testified, without objection from McDonald, that in all of the cases he had previously assisted, it was his understanding that the defendants had pleaded guilty. Although McDonald implies that the Government's comment meant that codefendant James Thompson had pleaded guilty to McDonald's same charge, neither Forstall's testimony nor the Government's comment mentioned or alluded to Thompson. Additionally, McDonald's counsel referenced Forstall's testimony regarding the prior cases

he had assisted. Consequently, the Government's comment was not improper, as it was a direct comment on the evidence presented at trial.

Assuming that the comment was inappropriate, it was not prejudicial, considering that no curative instruction was requested and that there was overwhelming evidence of McDonald's guilt. See Sanchez, 961 F.2d at 1176.

AFFIRMED.