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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2565-19**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

IMIER I. GREEN,  
a/k/a IMIER GREEN,

Defendant-Appellant.

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Submitted February 10, 2022 – Decided June 10, 2022

Before Judges Mawla and Alvarez.

On appeal from the Superior Court of New Jersey, Law  
Division, Mercer County, Indictment No. 19-08-0464.

Lauren A. Wimmer, attorney for appellant.

Angelo J. Onofri, Mercer County Prosecutor, attorney  
for respondent (Brittany Saxton, Assistant Prosecutor,  
of counsel and on the brief).

PER CURIAM

A jury convicted defendant Imier I. Green of seventeen counts of drug possession and drug distribution offenses, including first-degree possession of a controlled dangerous substance (heroin) with intent to distribute, N.J.S.A. 2C:35-5(a)(1) and N.J.S.A. 2C:35-5(b)(1). The trial judge sentenced him to a mandatory extended term, N.J.S.A. 2C:43-6(f), of thirty years' imprisonment subject to fifteen years of parole ineligibility. The jury acquitted defendant of second-degree possession of a firearm, N.J.S.A. 2C:39-4.1(a), and the State subsequently dismissed a charge of second-degree certain persons not to possess, N.J.S.A. 2C:39-7(b)(1). The judge merged related offenses. The trial took several days to complete; both the State and defendant presented witnesses. Because we find certain officer testimony violated the principles enunciated in State v. McLean, 205 N.J. 438 (2011), we now vacate and remand for a new trial. We recite only those facts relevant to the decision.

The prosecutor extensively explored the witnesses' prior training and experience over counsel's objections. Sergeant Joseph Paglione of the Mercer County Prosecutor's Office Special Victims Unit began by defining "spy bust" operations, and why he chose the surveillance location: "the drug dealer is not going to go out into the middle of the street and make a narcotics sale. He's going to do it off to the side out of view . . . ."

Paglione also explained that "oftentimes, dealers will work with several individuals, either as lookouts or other dealers that they're working with for whatever reason." Paglione said that he and the other person in the police vehicle "heard surveillance . . . that they were observing what they believed to be a hand-to-hand transaction . . . ."

Paglione was extensively questioned about the motor vehicle stops that follow surveillance, including how police stop "buyers," and "heroin users." He stressed the importance of detaining the "buyers" at a distance from the "dealers." Paglione was asked about his use of a bullet-proof vest during these operations. Defense counsel objected to some of his answers, but in the main, the objections were overruled.

Detective Sherika Salmon of the Mercer County Prosecutor's Office Narcotics Task Force watched defendant engage in both alleged exchanges from her parked car. Detective Thomas Paglione<sup>1</sup> from the Mercer County Prosecutor's Office Special Investigations Unit, "also known as the Mercer County Narcotics Task Force[,]" testified in detail about the division's functions and investigations of low to high-level drug distribution. Eventually, after

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<sup>1</sup> Unrelated to Sergeant Thomas Paglione. To avoid confusion, we will refer to each officer by his rank.

describing his background and training as a police officer "involved in over 2[,]500 narcotics investigations[,] " he went on to testify about a "spy bust operation in June of 2018[.]" He too described steps taken in order to avoid "alert[ing] the dealer[.]" The detective helped arrest Jake Forchetti, whom he described as one of defendant's buyers, for heroin possession.

Mercer County Prosecutor's Office Detective Elijah Phillips testified that the Special Investigations Unit engages in "buy-bust type[s] of investigation for narcotics dealers." In response to questioning, he explained a "buy-bust" operation, which he characterized as the least common method of investigation. Like the other officers, he said that narcotics surveillance takes place in out-of-the-way areas because "most people don't want to sell narcotics out of their house[.]" He added when describing his observations of defendant:

So after he did the deal, he walked back towards me. . . .

. . . .

. . . In my experience, as soon as the drug deal is done, they kind of want to clean themselves as quick as possible. So it's not something that they would linger there during the deal. It's basically a get in and get out type of deal. So as soon as he made the deal, count it, put it in his pocket, and walked off like nothing happened.

Phillips also discussed how surveillance teams conducting buy-bust operations closely watch both the "target" and the "buyer." Additionally, Phillips described the search of the home and the room he assumed belonged to defendant. On recross-examination, regarding his decision to charge defendant, Phillips said the decision was made once officers saw defendant "doing the drug deals[.]"

Sergeant Joseph Angarone of the Mercer County Prosecutor's Office Special Investigations Unit, the State's narcotics expert, described indicators that a given suspect is distributing drugs rather than possessing for personal use:

Q Now, Sergeant, I'm going to ask you how the drug distribution scheme works in Mercer County. Can you just describe for us how it's set up, what the hierarchy of things are?

A It's basically high[-]level, midlevel and street level. It's like a pyramid. At the top of the pyramid is the high level. High level is, typically, they're selling in kilogram form. They possibly have direct contact to the cartels. They're getting their product from, typically, driven in on [tractor] trailers or vehicles with compartments in them.

They typically sell to either other high[-]level dealers or midlevel dealers. Some high[-]level dealers will sell in, like I said, kilogram form or raw form. However, others I've come across where they bag it themselves. Bagging it is a huge operation, it takes a lot of manpower, and it's very labor intensive. And they typically like to sell it in a kilogram form instead of bagging it up.

Midlevel dealers, they're typically dealer to dealer they're selling. However, I do come across midlevel dealers selling street level also. So it varies. But if they're selling for street level, it doesn't mean they're a street level dealer. They could still be a midlevel dealer and sell street level also.

Typically, a midlevel dealer, they get a good price from the high[-]level dealer because they're selling a lot of product. Some midlevel dealers are buying it, like I said, in raw form, and they bring it to a mill, and they mill it up themselves, or they have people working for them.

And typically, back to the high[-]level dealers, when they're getting their kilos in, a lot of times we call it rerock, they rerock their kilos. So if they're buying one kilo, then they're adding some type of product -- fentanyl, I've seen laundry detergent, rat poisoning, chopped up prescription pills. Basically, you can add any type of powder to it. And from that one kilo, they're trying to make that one kilo into three kilos, or two kilos, because then they make more money. So -- we call that stepping on it, they're adding something to it.

So when the midlevel dealer gets the kilo, let's say a hundred grams, whatever they're buying, if they're buying it raw, it's not a hundred percent pure, because it's been stepped on already. Now when that midlevel dealer buys it, use a round number, a hundred grams again, they're going to add something to it, because they want to make money, more money also. So they're going to add the same type of thing, fentanyl, rat poison, whatever. It doesn't matter, something like a bite to it. They're going to add it also. That hundred grams, they're going to try to make that into 150, 175 or 200 grams. And then that's if they're bagging it themselves in a mill. However, a lot of times, they'll

buy it in bulk form already bagged up, like I said, in brick form or sleeves.

Q Can I just stop you right there for a second?

A Yeah.

Q So you just indicated you kind of skipped around a bit, so just so that we're clear, with the high[-]level dealers, the hierarchy of the scheme at the top, if they're purchasing in a kilogram form, they're stepping on it?

A That's correct.

Q And making additional product for sale?

A Yes.

Q Okay. Then when we get to the midlevel dealers, some midlevel dealers are purchasing it, as you referenced it, raw in just the powder form, not prepackaged for distribution?

A That's correct.

Q Those types of midlevel dealers are essentially restapping on the product that was passed down from the high[-]level dealer; is that correct?

A Typically, that's what happens, yes.

Q And then they actually are responsible for packaging themselves into the glassines or the baggies for distribution?

A Yes.

Q But then there's the other type of midlevel dealer that you indicated where they're not purchasing from the high[-]level dealer raw for them to package themselves, it's already prepackaged in the individual decks, bundles[,] and bricks?

A Correct. Or another midlevel dealer is buying it prepackaged from the other midlevel dealer.

Q Okay. Now, let me ask you this: With the high[-]level dealer, do they have individuals that are working for them?

A Yeah -- yes. Typically, if they're buying it and they have a mill set up, then they have a lot of people working for them, because they need people to bag it up for them. Like I said, it's very labor intensive, very labor intensive.

And just like midlevel dealers, they have people working for them also. If they're bagging it up, one, if they are, same as high level, maybe the high[-]level guy is not going to meet you face-to-face. He's going to send somebody. Same with the midlevel dealer, if you're buying off them. They might not trust you, but they might send somebody else that they have working for them, like a very good friend, a relative, something like that, girlfriend -- happens all the time.

Q Okay. So at the midlevel, though, however, in your testimony, you indicated that on occasion, however, you have seen midlevel dealers actually conduct street level transactions. And I know we haven't got to the street level yet, but --

A Street level is basically just how it sounds, is hand-to-hand purchases on the street.



Q But in regard to the midlevel, on occasion, do midlevel dealers actually go to the street?

A They do, yeah, surprisingly, they do.

Q Okay. And based on, you know, all the information that you learned over your law enforcement career, and specifically in your career as it relates to narcotics investigations, why would they expose themselves to go and make street sales?

A Greed, I guess, for the money. If somebody's working for you, then you're paying that guy also, or the girl, so greed.

Q Now, also, does relationship with buyers potentially --

A Yeah, absolutely. Say I'm a midlevel drug dealer, and a friend I went to high school with is a, like coming up drug dealer, and they're calling me for product, I'm going to meet that person because I have a relationship with them. Absolutely. If you're maybe a relative is buying from you, happens all the time, you're going to meet that person. He's your relative. Obviously, you're going to meet him.

Q Now, in regard to the midlevel dealers, you indicated that some of the individuals you see work for midlevel dealers include relatives --

A Relatives, boyfriends, girlfriends, mothers, fathers, brother, sister. You name it.

Q Have you --

A We've seen it.

Q -- seen a variation in the age range that -- regarding the individuals working under the midlevel drug dealer?

A Yeah, you see from juvenile to adult. Obviously, juvenile, they'll use a juvenile because they're impressionable, and juvenile gets arrested, honestly, they're not going to jail, so, like an adult would.

Q Okay. Now, you already kind of described about the street level. You indicated that's just general hand-to-hand transactions at the street level; is that right?

A Correct.

Q Okay, so --

A And that's on a smaller scale, like a bundle, ten bags, maybe a couple bags. That's what a street level would be.

Q Okay, now --

A Go ahead.

Q I'm sorry?

A Maybe a brick. That's about it, for a street level.

Q Now, of approximately -- no, strike that. You indicated that when you explained the step on process, you indicated that sometimes these dealers are stepping on their product and adding various items, and you included fentanyl?

A Correct.

Q Okay. Is the addition of fentanyl in heroin a trend that you've been seeing in Mercer County?

A Yeah, that's -- and all over the country, fentanyl, that's all you hear, fentanyl, fentanyl, fentanyl. A lot of times now we're basically doing investigations, we think we're buying heroin, it's not even heroin. It's straight fentanyl.

Q Now, has the protocol changed given the recent trend of the additions of fentanyl being mixed with the heroin in the Mercer County Prosecutor's Office?

A As of right now, it's just heroin. We don't test it for -- we send it to the lab. We don't test it ourselves because it's so dangerous. But now we're just starting to see fentanyl also mixed with other things to include cocaine and marijuana.

Q Okay. So Sergeant, you just provided us with a lot of information about the general drug distribution scheme, networks, in Mercer County. When you look at a case to provide an opinion as to whether an individual who's caught with a set of narcotics solely possesses for personal use versus possesses the sum of drugs for intent to distribute, are there various factors that you look for?

A Yeah, there's several factors.

Q All right. So can you just -- I mean, we can go one by one since you said there are several. Why don't you start with one that you look at?

A The main factor, one of the top factors is the amount of it. A large amount is very indicative of possession with intent to distribute. A typical user would never have a large amount of heroin on them. One, they wouldn't be able to afford it because their addiction level is so high that they wouldn't be able to -- they don't have the money to do it. That's why we see a lot of heroin addicts that are -- that do a lot of burglaries and stuff like that, steal, cut copper wire, whatever they do. That's one factor, the amount.

Q Okay. So if I can just follow up on that factor, you indicated that a large amount is inconsistent with personal use. And I know this may vary case by case, Sergeant, but can you just give a description of what you consider a large amount?

A What I consider a large amount or --

Q What you consider a large amount in terms of -- if you're looking at a case, and you're looking specifically at factor number one, the amount, is there a certain quality of number that you would say, oh, X amount, that's not indicative of personal use, it's indicative of possession with intent to distribute?

A If I'm looking at the totality of it, I'm looking for other factors, but if it's only what the person is possessing on them, I would say for a typical user would not have less than two bricks, so a hundred bags on them.

Q They wouldn't have less than?

A I'm sorry, they wouldn't have more than two bricks.

Q And two bricks is a sum total of how many decks?

A A hundred bags, a hundred decks.

Q Now you said -- I'm sorry, you said something about on their personal possession. Sometimes are you presented with facts wherein an individual isn't caught with a set amount on their exact person, but based on the facts and circumstances of the case, that it's being essentially attributed to an individual?

A Yeah. Some dealers, you might not catch them with anything on them. They might have no drugs on them. But when you read the set of circumstances, what happened is, they could have been observed by the police making a hand-to-hand sale. So when they make that sale, the buyer has everything, and the dealer has nothing on them. That would be a considered a possession with intent to distribute, even though the dealer does not physically have anything on their person.

Q Are there occasions also, Sergeant, where a specific set of drugs is located in a residence or multiple residences?

A Happens all the time. Drugs and money. So basically, drug dealers, they don't like -- some of them, not all of them -- they might put money in one house, drugs in another house, or drugs one place in the residence, money in another place, a weapon in another place. Or a lot of times they put stuff outside. They have abandoned houses next door, they put it in an abandoned house. Because one, they don't think the police are going to search the abandoned house; two, the police might not search the abandoned house

because it's in such bad condition they can't go in there, but they know exactly where that is [i]n the residence[. C]ops are lazy. Once they find drugs over here, they might be -- not go over there to look for additional drugs or money or weapons. They might find what they think is a decent amount, they're very happy, and they get lazy. And that's why they, drug dealers, will put stuff in various locations within the house, outside of a house, in a car, so, yes, they do.

Angarone's detailed background testimony regarding the drug trade spanned some twenty-one transcript pages, only partially reproduced here. Defense counsel asked no questions of Angarone.

Timothy Sullivan, a forensic scientist with the New Jersey State Police, testified as a narcotics expert. He analyzed two separate samples, and concluded they both contained heroin and fentanyl. Jyoti Patel, another forensic science expert for the State, identified heroin, fentanyl, and 4-ANPP in several bundles marked "Cream" in blue ink.

Defendant and various other witnesses testified that the contraband found in the home, where the State claimed defendant lived, belonged solely to his half-brother, Anthony Robbins, Jr. Robbins himself insisted all the contraband retrieved from the home belonged to him. Additionally, Robbins stated he actively dealt drugs in June and July 2018, and that defendant did not then live at the home.

During closing, the prosecutor connected Angarone's extensive testimony regarding the drug trade in general to the surveillance by the officers. She specifically touched upon the testimony that "in the midlevel, they tend to have individuals that work with them, and it includes family members, juveniles." The prosecutor asserted Robbins—who was only seventeen when the warrant was executed—worked for or with defendant. She described the surveillance officers' observations of defendant "deal[ing] drugs to . . . Robert Baker who was in the green pickup truck, to . . . Forchetti who was in the white work[-]style van." Defense counsel objected and moved for a mistrial. The judge denied the application, ruling that the prosecutor's statements fell "squarely within the realm of fair comment . . . ."

On appeal, defendant raises the following points of error:

POINT I

THE TRIAL COURT ERRED WHEN IT PERMITTED THE STATE TO IMPROPERLY BOLSTER THE LAY TESTIMONY OF POLICE OFFICERS OVER DEFENSE COUNSEL'S OBJECTION IN VIOLATION OF STATE V. MCLEAN.

POINT II

THE COURT ERRED IN OVERRULING DEFENSE COUNSEL'S OBJECTION TO HEARSAY TESTIMONY REGARDING MOTOR VEHICLE

STOPS THE TESTIFYING DETECTIVE DID NOT  
PERSONALLY CONDUCT.

POINT III

THE PROSECUTOR'S COMMENTS DURING  
SUMMATION DEPRIVED DEFENDANT OF A FAIR  
TRIAL.

I.

We review a trial court's evidentiary rulings for abuse of discretion, as "the decision to admit or exclude evidence is one firmly entrusted to the trial court's discretion." State v. Prall, 231 N.J. 567, 580 (2018) (quoting Est. of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 383-84 (2010)). Trial judges have broad discretion in ruling on evidentiary questions. State v. Harris, 209 N.J. 431, 439 (2012). Appellate courts may not substitute their own judgment for a trial court's absent a "clear error in judgment" so erroneous that "a manifest denial of justice resulted." State v. Scott, 229 N.J. 469, 479 (2017) (quoting State v. Perry, 225 N.J. 222, 233 (2016)). We disregard harmless errors, but errors capable of causing an unjust result the jury "otherwise might not have reached" require reversal. Prall, 231 N.J. at 581. "When a defendant fails to object to an error or raise an issue before the trial court, we review for plain error." State v. Ross, 229 N.J. 389, 407 (2017) (citing R. 2:10-2).



Lay witnesses may offer opinions if "rationally based on the witness' perception" and helpful to "understanding the witness' testimony or determining a fact in issue." N.J.R.E. 701. The opinion "must be the product of reasoning processes familiar to the average person in everyday life." State v. Brockington, 439 N.J. Super. 311, 322 (App. Div. 2015) (quoting United States v. Garcia, 413 F.3d 201, 215 (2d Cir. 2005)). Police officers testifying as lay witnesses may not opine that he or she witnessed a narcotics sale, as this would create "an opportunity for police officers to offer opinions on defendants' guilt." Id. at 323 (quoting McLean, 205 N.J. at 461). That said, "[c]ourts in New Jersey have permitted police officers to testify as lay witnesses, based on their personal observations and their long experience in areas where expert testimony might otherwise be deemed necessary." State v. LaBrutto, 114 N.J. 187, 198 (1989).

In McLean, police officers observed the defendant approach various individuals and engage in a series of suspected drug transactions. 205 N.J. at 443-44. The officers arrested the defendant and found heroin and crack cocaine in his car. Id. at 444. At trial, a detective testified he saw defendant engage in "suspected hand-to-hand drug transactions." Id. at 445. Several of the prosecutor's questions invoked the detective's training, education, and experience. Id. at 463. Accordingly, the Supreme Court held that the detective's

testimony "called for an impermissible expert opinion. . . . [I]t was impermissible both because it was an expression of a belief in defendant's guilt and because it presumed to give an opinion on matters that were not beyond the understanding of the jury." Ibid.

Defendant argues on appeal that the State equally impermissibly bolstered the testifying officers' credibility by allowing them to describe their employment history and experience. Further, defendant contends admitting "lay opinion[s] that [d]efendant engaged in hand-to-hand drug sales of heroin" violated McLean. For instance, Phillips invoked his own training and experience in testifying he watched defendant sell drugs. And Sergeant Paglione and Detective Paglione each testified that they found "heroin" in the alleged buyers' vehicles.

The State argues the officers' testimony did not violate McLean because it consisted of background designed only to lay a foundation, and that "their testimony was responsive to what they physically saw." As to Phillips, the State maintains his testimony was merely "an abstract reference to drug dealing . . . that provided a reason for the responsive tactics of the officers." Further, as defendant failed to object to some of the specific testimony at trial, the plain error standard applies.

The State also insists Sergeant Paglione's testimony describing the drug activity near 282 Bellevue Avenue, defendant's alleged home and the searched residence, was purely foundational as to the geographical area. And the State maintains officer comments that they saw "heroin" in the alleged buyer's vehicles were responsive "to the question of what happened during the motor vehicle stops, and [were] further used to explain the reason for [the alleged buyers'] arrests." The State also points out that "the jury heard and had a chance to contemplate both lay and expert witness testimony when coming to their determination[.]"

Certainly, the State is correct that witnesses may provide some basic background information. While the State fails to offer any binding legal authority on that point, such testimony is common practice. And even if Sergeant Paglione and Detective Paglione each violated McLean by testifying they saw heroin in the alleged buyers' vehicles, such a violation is harmless because experts testified separately that the substance found in the vehicles was heroin. But Phillips invoked his own training and experience when he said he watched defendant engage in a street level drug sale—in clear violation of McLean.

Additionally, the violations contributed to an unjust result that might not otherwise have been reached. Robbins attempted to take full responsibility for the drugs found at 282 Bellevue, and defendant denied living there. Thus, the most important evidence against defendant may have been the testimony of the officers who claimed to have watched him conduct two drug sales and who used those conclusory words.

Phillips—a lay witness—opined directly as to defendant's guilt. This testimony was "impermissible both because it was an expression of a belief in defendant's guilt and because it presumed to give an opinion on matters that were not beyond the understanding of the jury." See McLean, 205 N.J. at 463. The jury had the obligation to interpret the two exchanges, which Phillips interpreted for them in the context of all the extensive testimony regarding surveillance operations generally, and his and other officers' credentials. The violation warrants reversal.

## II.

Generally, "[p]rosecutors are afforded considerable leeway in closing arguments as long as their comments are reasonably related to the scope of the evidence presented." State v. Patterson, 435 N.J. Super. 498, 508 (App. Div. 2014) (quoting State v. R.B., 183 N.J. 308, 332 (2005)).

Prosecutorial misconduct justifies reversal where the misconduct was so egregious as to deprive defendant of a fair trial. State v. Smith, 167 N.J. 158, 181 (2001). "In deciding whether prosecutorial conduct deprived a defendant of a fair trial, 'an appellate court must take into account the tenor of the trial and the degree of responsiveness of both counsel and the court to improprieties when they occurred.'" State v. Williams, 244 N.J. 592, 608 (2021) (quoting State v. Frost, 158 N.J. 76, 83 (1999)). "Factors to be considered in making that decision include, '(1) whether defense counsel made timely and proper objections to the improper remarks; (2) whether the remarks were withdrawn promptly; and (3) whether the court ordered the remarks stricken from the record and instructed the jury to disregard them.'" Ibid. (quoting Frost, 158 N.J. at 83). Reversal is appropriate only where the prosecutor's actions are "clearly and unmistakably improper" so as to "deprive defendant of a fair trial." Patterson, 435 N.J. Super. at 508 (quoting State v. Wakefield, 190 N.J. 397, 437-38 (2007)). "In reviewing closing arguments, we look, not to isolated remarks, but to the summation as a whole." State v. Atwater, 400 N.J. Super. 319, 335 (App. Div. 2008).

Defendant contends he "objected to the repeated instances of prosecutorial misconduct during summation" and takes issue with the prosecutor's statement that Salmon "followed th[e] green . . . pickup truck" because "Salmon did not

testify that she followed the truck[.]” Defendant also challenges the prosecutor's references to Phillips and another detective watching defendant sell drugs. He argues the prosecutor “impermissibly commented on the credibility of” Phillips and Salmon. Indeed, defendant objects to all instances where the prosecutor implied that the officers watched him sell drugs.

Additionally, defendant argues the prosecutor improperly argued that he and Robbins sold drugs together as a “[f]amily business.” Finally, defendant implies the prosecutor invoked “facts not in evidence” by arguing the State did not need to call the alleged buyers because they were drug users and unlikely to testify against their own dealer.

The State counters by arguing the prosecutor's comments “permissibly stood within the evidence presented and legitimate inferences therefrom.” For example, the prosecutor's comment about Salmon following the truck flowed reasonably and logically from her testimony about the truck's exact movements. The State also argues the comment about detectives observing defendant reasonably flowed from investigation reports and Salmon's testimony. Additionally, the State denies that the prosecutor personally vouched for witness's credibility. Rather, she simply argued they were credible without bringing in extra evidence from outside the record.

Further, the State asserts that the prosecutor's statement about defendant dealing drugs with Robbins as a "family business" was a permissible inference based on the evidence, including Robbins' own admission that he actively sold drugs from 282 Bellevue, which defendant denied was his home, in June and July of 2018. The prosecutor simply presented "her theory of the case to the jury[.]" Finally, the State maintains the prosecutor did not introduce new facts in explaining her rationale for not calling the alleged buyers as witnesses. Rather, she "merely explain[ed] the State's reason for not calling [the alleged buyers], as well as the likely reason these individuals would not want to testify."

No doubt the closing argument will differ at retrial. The prosecutor virtually quoted testimony that violated the principles enunciated in McLean. Given that problem, there is no doubt that the prosecutor erred by repeating such testimony. The prosecutor could have argued that there was only one reasonable conclusion for the exchange of an object or objects for currency: that the officers witnessed a drug transaction. Instead, she repeated the witnesses' improper testimony, doubling down on the McLean violation.

We do not reach defendant's other claimed points of error as we conclude retrial is necessary. We vacate defendant's convictions and remand for retrial.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION