SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1009-20

STATE OF NEW JERSEY,

Plaintiff -Respondent,

v.

SHAQUAY A. PROCTOR,

Defendant-Appellant.

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Argued September 12, 2023 – Decided September 26, 2023

Before Judges Sumners and Smith.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Indictment No. 19-08-2043.

Nadine Kronis, Assistant Deputy Public Defender, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Lauren S. Michaels, Assistant Deputy Public Defender, of counsel and on the brief; Sandra Alrabaa, J.D., appearing pursuant to Rule 1:21-3(a), on the brief).

Hannah Faye Kurt, Special Deputy Attorney General/Acting Assistant Prosecutor, argued the cause for respondent (Theodore N. Stephens II, Acting Essex County Prosecutor, attorney; Barbara A. Rosenkrans,

Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Shaquay Proctor appeals his jury trial convictions for third-degree possession of controlled dangerous substances (CDS) – heroin and cocaine, N.J.S.A. 2C:35-10(a)(1), second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b)(1), and disorderly persons possession of marijuana, N.J.S.A. 2C:35-10(a)(4), claiming prosecutorial misconduct denied him a fair trial. We affirm because the prosecutor's remarks during trial either were responses to defendant's implied trial strategy, did not improperly bolster a State witness's testimony, or were properly cured by the trial judge.

I

On May 25, 2019, City of Newark Detectives Rodny Severe and Youletta Rainey were driving in an unmarked vehicle in front of their colleagues, Detectives Christopher Mos and Christopher Serrano, who were also driving in an unmarked vehicle. The detectives saw defendant and Billy Prophet[1] walking on the sidewalk and sharing a marijuana blunt. After smelling marijuana smoke,

[1] We use the spelling set forth in the indictment. In the court transcripts, it is spelled "Profit."

Severe and Rainey pulled over in front of the pair while Mos and Serrano stopped behind them.

As he exited his car "two car lengths away" from defendant, Mos stated he saw defendant get into a baseball "catcher['s] squat," remove a gun from his jacket, and place it near the rear tire of a parked blue vehicle. Mos told Severe to arrest defendant. Severe also saw defendant "bend down behind a vehicle," however, he did not see the gun until after he arrested defendant and stated it was by the driver's side toward the middle of the car. Like Severe, Rainey did not see the gun until she looked under the car after defendant's arrest. The gun was cocked and loaded. The officers recovered seventeen bags of marijuana, eleven bags of cocaine, and seven glassine envelopes of heroin from defendant.

Following a two-day jury trial, defendant was found guilty of CDS and gun possession offenses.[2] Defendant was also found guilty by the trial court of disorderly persons possession of marijuana, N.J.S.A. 2C:35-10(a)(4), under a summons-warrant. He was sentenced to an aggregate five-year term with a forty-two-month parole disqualifier.

Defendant appeals, arguing:

POINT I

[2] Prior to trial, the State dismissed several charges of CDS possession and intent to distribute CDS as well as a charge of firearm possession.

OVER MULTIPLE DEFENSE OBJECTIONS AND ADMONISHMENTS FROM THE COURT REGARDING HIS MISCONDUCT, THE PROSECUTOR REPEATEDLY QUESTIONED DEFENSE COUNSEL'S MOTIVES AND DENIGRATED THE DEFENSE, IMPROPERLY BOLSTERED ITS POLICE WITNESSES, AND PAINTED DEFENDANT AS BEING HIGH WITHOUT ANY BASIS IN THE RECORD. THIS PROSECUTORIAL MISCONDUCT DENIED DEFENDANT DUE PROCESS AND A FAIR TRIAL.

A. THE PROSECUTOR DISPARAGED DEFENSE COUNSEL THROUGHOUT TRIAL BY REPEATEDLY MISCHARACTERIZING THE DEFENSE THEORY, INSINUATING THAT DEFENSE COUNSEL WAS ACCUSING THE OFFICERS OF CORRUPTION AND PLANTING THE GUN, AND THEN TELLING THE JURY IN SUMMATION THAT DEFENSE COUNSEL'S CONCESSION OF THE DRUGS WAS A "TACTIC" DESIGNED TO FOOL THEM.

B. THE PROSECUTOR ALSO IMPROPERLY BOLSTERED POLICE WITNESSES, BOTH THROUGH FURTHER UNFOUNDED ASSERTIONS REGARDING THE DEFENSE STRATEGY AND HIS ARGUMENT THAT THE OFFICERS WERE NOT CORRUPT BECAUSE THEY ARE PAID TO UPHOLD THEIR DUTIES.

C. THE PROSECUTOR ALLUDED TO FACTS NOT IN EVIDENCE SEVERAL TIMES AND IMPROPERLY ARGUED THAT PROCTOR WAS "HIGH" AT THE TIME OF THE OFFENSE, PROMPTING THE JUDGE TO ADMONISH HIM EVEN AFTER A SUSTAINED OBJECTION DURING HIS SUMMATION.

D. THE CUMULATIVE EFFECT OF THE PROSECUTOR'S MISCONDUCT DEPRIVED PROCTOR OF HIS CONSTITUTIONAL RIGHT TO DUE PROCESS AND A FAIR TRIAL, AND REQUIRES REVERSAL.

II

Before addressing defendant's claims, we briefly mention some guiding principles. We reverse a conviction for prosecutorial misconduct when it was "clearly and unmistakably improper" and "so egregious" in the context of the trial as a whole that it deprived the defendant of a fair trial. State v. Pressley, 232 N.J. 587, 593 (2018) (quoting State v. Wakefield, 190 N.J. 397, 437–38 (2007)). "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)). "If, after completing such a review, it is apparent

. . . that the remarks were sufficiently egregious, a new trial is appropriate, even in the face of overwhelming evidence that a defendant may, in fact, be guilty." State v. Smith, 212 N.J. 365, 404 (2012) (citing Frost, 158 N.J. at 87).

A.

During cross-examination, the prosecutor asked Severe:

> Now, I think that the ladies and gentlemen of the jury would like to know, sir, did you or a member of your unit place this weapon on the defendant and say it was his when it wasn't?

Defense counsel objected, stating at sidebar, that the question was beyond the scope of cross-examination because he did not assert the officers planted the gun on defendant. The prosecutor retorted:

> [Defense counsel] is indicating to the jury that this weapon was never in the defendant's possession. . . . And what I am trying to point out is, well, if it wasn't in his possession then these officers are lying, okay? It's one of the two. It can only be that way. If they found a gun and they said it was his, then they are lying.

The judge sustained the objection, finding the question was beyond the scope of cross-examination because the defense did not assert or imply through questioning that the gun was planted. After the sidebar, the judge directed Severe not to answer the question.

Thereafter, the prosecutor asked Severe: "Now, did you just happen to find this gun and say it was the defendant's?" Defense counsel objected, stating it was the same line of questioning deemed beyond the scope of cross-examination. At sidebar, the prosecutor countered: "[I]f it's found property, then the officers must have placed it on him, or accused him of it, or falsely accused him of it." The judge overruled the objection, stating:

> So, this question is a little bit different than the last one. . . . It's asking are they just claiming that it was his because they found it there. . . . So, I mean, that is the crux of the case, the crux of the defense, so I find it is relevant. I will allow that line of questioning.

Later, during summation, the prosecutor argued:

> So, what [defense counsel] has said to you is that the police have come in here and they have lied to you. She tried to soften this by saying, well, we're not saying that they planted the gun on him, but the gun was there. And they said that the defendant had the gun. I think I am missing something in this argument. It is conceded that the defendant was smoking marijuana with Billy [Prophet]. Conceded. It is conceded that he had heroin. He had cocaine. And he had bags of marijuana in his pockets. Basically[,] he's a walking illegal pharmacy. He's got all three. And in addition, he was smoking the marijuana that we have already talked about.
>
> All right, so, the police are right about that. He is smoking marijuana as he was walking down the street. He does have narcotics on his person, but he doesn't have the gun. This is a not unfamiliar tactic, ladies and gentlemen. The defense is conceding the narcotics in

> the hope that that will be sufficient for you. That [] is enough.

Defense counsel objected, and asserted at sidebar that the prosecutor was improperly telling the jury the motivations behind her argument.

The judge rejected the prosecutor's contention that there was nothing wrong about her comments, and sustained the objection, ruling:

> I think you are allowed to give commentary about [defendant conceding his drug charges], but you are not allowed to, in essence, cast aspersions on defense counsel for making tactical arguments for some reason to overcome the State's burden or somehow insinuating that she's being not forthright with the jury. And that seems to be I think what is being conveyed by that argument.

The judge instructed the jury "not to consider for any reason any commentary with regard to defense tactics."

Later, without objection by defendant, the prosecutor stated:

> Conceding the drugs would be as like a surgeon would do. Someone who had a badly injured arm, you may take off the hand in order to save that arm, and that's really what has occurred here. Concede the drugs; argue the gun. That's what it comes down to.

Defendant argues before us the prosecutor's remarks mischaracterized his strategy by accusing defense counsel of "misleading the jury to believe that the testifying officers were corrupt and had planted the gun on [defendant]."

Defendant notes his theory of the case was the gun did not belong to him, not that it was planted by the officers. Defendant further contends the prosecutor's questioning of Severe improperly established a "false dichotomy" that either he possessed the gun, or the officers planted it on him. The prosecutor then continued to push her proposition after being admonished by the judge that it was beyond the scope of Severe's cross-examination. The prosecutor's remarks, according to defendant, were inappropriate because they were not prompted by defense counsel's assertions.

Defendant asserts the trial judge did not cure the prosecutor's misconduct because he did not strike the question from the record or tell the jury not to consider it for any purpose. Moreover, defendant argues the judge erred in overruling his second objection because the prosecutor's questioning "was merely a veiled attempt at repeating the same improper suggestion to the jury[] and it was justified on the same basis given for the prior objection." Defendant maintains the judge's decision to overrule the second objection negated any curative value in sustaining the first objection, thereby allowing the jury to consider the prosecutor's dichotomy.

Defendant also contends the judge's curative instruction following the prosecutor's erroneous remarks concerning defendant's concession of the drug

charges was insufficient and too general to cure the misconduct. Given the repetitive and egregious nature of the prosecutor's remarks, defendant maintains the judge's instruction needed to be more specific as it was "unlikely that the jury would parse out specific arguments advanced by the prosecutor as 'commentary with regard to defense tactics.'"

Defendant fails to demonstrate the prosecutor's actions constituted misconduct that was "clearly and unmistakably improper." Pressley, 232 N.J. at 593. The trial judge properly cured the prosecutor's "planting" question by sustaining defendant's objection and informing the jury that the question was beyond the scope of Severe's cross-examination. See State v. Vallejo, 198 N.J. 122, 134-35 (2009) (holding a curative jury instruction "must be firm, clear, and accomplished without delay . . . to alleviate potential prejudice to a defendant"). There was no prejudice to defendant given the question was never answered, and the judge later directed the jury, "[t]he mere fact that an attorney asks questions and inserts facts or comments or opinions in[to] [a] question in no way proves the existence of those facts."

The prosecutor's question concerning whether Severe "happen[ed] to find this gun and say it was the defendant's" was also appropriate. The trial judge was correct in reasoning the question was "the crux of the case." Indeed, defense

counsel stated in her opening: "[W]hat the State is going to want you to believe is what the police said happened simply because a gun [was found] . . . . A gun that the police had to charge to somebody, but . . . did not ever belong to [defendant]." Therefore, while the previous "planting" question had a malicious undertone, and was properly not allowed to be answered, the following question was more appropriate and directed toward the heart of the dispute as described in defense counsel's opening. See State v. Engel, 249 N.J. Super. 336, 379 (App. Div. 1991) (stating a prosecutor may comment on defense tactics to "right the scale" (quoting United States v. Young, 470 U.S. 1, 13 (1985))).

Finally, the prosecutor's remarks concerning defendant conceding the drug charges were properly cured by the trial judge. Right after the portion of the statement casting aspersions on defense counsel, the judge counseled the jury: "This is a not unfamiliar tactic, ladies and gentlemen. The defense is conceding the narcotics in the hope that that will be sufficient for you. That [] is enough." See Vallejo, 198 N.J. at 134-35. Moreover, the context of the instruction and the judge's use of the word "tactic" drew a clear connection to the preceding statements the judge wanted the jury to ignore. Although the prosecutor continued commenting on defendant's concession tactic after the instruction, the unobjected-to comments did not cast unjust aspersions on

defense counsel, and the comments appropriately responded to defendant's drug use concession and his portrayal as a target. See Frost, 158 N.J. at 86 ("'A prosecutor is not permitted to cast unjustified aspersions' on defense counsel or the defense." (quoting State v. Lockett, 249 N.J. Super. 428, 434 (App. Div. 1991))); Engel, 249 N.J. Super. at 379. In sum, the prosecutor's alleged mischaracterization of the defense was not "so egregious that it deprived the defendant of a fair trial." Frost, 158 N.J. at 83 (citations omitted).

B.

During summation, the prosecutor made the following statements, which were not objected to by defendant:

> Now, ladies and gentlemen, again, [defense counsel] would have you believe that the police are so evil – I love that word. It's a good old[-]fashioned word. People don't use it all that much anymore. But that's what she's saying, that they are evil. That they would put this weapon in the hands of this defendant to accuse him of the crime of unlawful possession of a firearm, even though, as I said, they saw him smoking marijuana, they found the drugs in his pockets. But they decided they were going to say that's your gun. I hate to inject rational thought into an argument. It always gets in the way of a good argument. But I am going to do so. . . . You heard Detective Severe first. He makes the observations which he's testified to about smelling the marijuana, seeing the defendant and his cohort passing the marijuana between them, addressing them, then pulling up, getting out of the car. He says the defendant reached down near the jeep. That's been

> testified to. If these individuals are so evil, if there is some sort of conspiracy going on here, why didn't he just say I saw the gun? Or is that too logical? Detective Rainey said the same thing. . . . I didn't see what was in his hand. Why didn't she just say, I saw the gun. If they are so evil?
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> . . . .
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> As I said, Severe and Rainey never said that they actually saw the weapon. It was Mos who saw the weapon. Again, if these people are so evil, why didn't they just say that we saw the defendant take the weapon out of his pocket. . . . Would have jazzed it up a little bit. Made it look a little worse than what it actually was, which is bad enough.

Defendant did object to the prosecutor's subsequent argument that:

> Detective Severe, Officer Mos, Detective Rainey, Serrano, et cetera, right on down the line, they had a job to do. They did it. They did not compromise in the performance of that duty. You have sworn an oath that you will follow the law, that you will only consider the evidence in this case, without bias, without passion, without prejudice, without sympathy.
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> . . . .
>
> The officers who have testified in this case did not compromise May 25th of last year. They saw their duty and they did it. They were required to do so. That's what they get paid for.

Defendant contended the prosecutor improperly elevated the officers' testimony by implying they would not lie because they are paid to do their job

and have a duty to pursue justice. The prosecutor replied that his statement simply compared the officers' oath to the jury's oath. The judge recognized the prosecutor could not state the officers would not lie because they are paid, but he could mention how their duties to enforce the law would be permissible. The judge, overruling the objection as premature, nevertheless stated defendant could object if the prosecutor continued to make implications concerning the propriety of the officers' testimony.

Defendant now asserts the prosecutor "used his summation to bolster the officers' testimony by improperly commenting on their paid duty to uphold the law." Defendant further argues the prosecutor's consistent, albeit sarcastic, usage of the term "evil" to describe the officers inaccurately portrayed defense counsel's argument to the jury and served to bolster their testimony by insinuating they would not lie. Defendant maintains the prosecutor improperly established his false accusation theory that defense counsel was misleading the jury and suggested "the officers were not and could not be liars."

In addition, defendant asserts the trial judge erred in overruling his objection to the prosecutor's statement comparing the juror's oath to the officers' duty. He contends the objection was not premature as the prosecutor's justification for the jury comparison and statement that the officers "did not

compromise May 25th," implied the officers did not lie due to their paid duty to pursue justice. Given the false dichotomy the prosecutor had established—implying the officers must be truthful—defendant contends the jury was left to conclude the gun was defendant's "because to find otherwise is to call the officers corrupt liars."

Defendant claims the prosecutor's persistent disparagement of the defense and bolstering of the officers' credibility inhibited the jury's ability to make its credibility determinations. Defendant urges the prosecutor's summation was not based on the record or in response to defense counsel, and directly contradicted the judge's instruction not to comment on defense counsel's tactics.

The prosecutor did not impermissibly bolster the officers' testimony. First, the prosecutor's repeated use of the term "evil" was not objected to by defense counsel thereby presuming it is not prejudicial. See Frost, 158 N.J. at 83. Given defendant was attempting to undermine the officers' credibility by arguing they were falsely charging him with the gun, the prosecutor's statements that defendant wanted the officers' viewed as "evil" and then using the term to highlight holes in the defense was not clearly an unjust result. State v. Sherman, 230 N.J. Super. 10, 18 (App. Div. 1988) (quoting State v. Hipplewith, 33 N.J. 300, 309 (1960) (holding "[i]n the absence of objections by defense counsel to

the [] prosecutor's summation, we may not reverse unless [the prosecutor's] excesses 'so grievously affect the substantial rights of the defendant as to convince [the judge] that they possessed a clear capacity to bring about an unjust result.'")). The remarks were simply the prosecutor's permissible "vigorous and forceful closing argument." Williams, 244 N.J. at 607 (quoting Frost, 158 N.J. at 82).

Second, the prosecutor did not make any improper statements concerning the officers' propriety. The prosecutor, albeit stridently, advocated the officers' testimony was the correct statement of events. Without impermissibly stating the officers did not have any motive to lie or emphasizing the adverse consequences associated with an officer lying on the stand, the prosecutor emphasized the officers, like the jury, had a duty to do their job correctly, which they performed by arresting defendant. See Frost, 158 N.J. at 85. The prosecutor's comparison is unlike the situation in State v. Goode, where misconduct was found when the prosecutor: (1) stated the officers would not lie because of the "magnitude" of charges that could be brought against them; and (2) told the jury the officers had no motive to lie. 278 N.J. Super. 85, 90 (App. Div. 1994). Nor similar to the situation in Engel, where the prosecutor remarked the officers were "good men who leave their family [and] work day

and night" so they would not "jeopardize their careers" over the defendants. 249 N.J. Super. at 379 (alternation in original); see also United States v. Amerson, 185 F.3d 676, 686 (7th Cir. 1999) (concluding the prosecutor's statement the police officers were performing "their duties to rid our streets of cocaine" were proper as "the prosecutor did nothing more than explain the duties of the police officers; he stopped short of endorsing a personal opinion about the officers' testimony").

There is a distinction between merely commenting on the veracity of the officers' testimony versus stating they performed their job adequately. Especially where, as here, the central issue of the case is whether defendant was correctly arrested and prosecuted for gun possession. While the prosecutor seemed to be on the verge of making an inappropriate statement, the judge properly found defense counsel's objection premature as no prejudicial statement was made. Therefore, defendant was not denied a fair trial by the prosecutor's remarks concerning the officers' testimony.

C.

The prosecutor's summation also included statements concerning defendant's intoxication, specifically: "Now, on that day, May the 25th, the defendant, while high, which explains a lot of his actions[.]"The judge sustained

defendant's objection to the statement as there was no testimony that defendant was intoxicated. The judge told the jury: "The objection has been sustained. There was no testimony presented at trial regarding anyone's level of intoxication, let alone being high. You should disregard that commentary. It will be stricken from the record."

Thereafter, the prosecutor stated:

> While the defendant was in the process of smoking marijuana, ladies and gentlemen, which may explain a number of his actions that day, he had in his possession the narcotics that have been mentioned and have been testified to, and he was walking around with a loaded, cocked firearm with one round in the chamber. Oh, that's not a disaster waiting to happen now, is it? What could possibly go wrong with that scenario. Now, there are reasons that there are laws. Frankly protection of the public for one.

In response, the judge requested a sidebar and cautioned the prosecutor:

> I feel as though I need to rein this in a little bit, counsel. I think that you are going a little bit far afield on the evidence as been presented. My concerns are that at this point you are going to venture into the protection of the public, justifying a finding of guilty in this case and then I don't want you to get any further than where you are at this point. The aspersions potentially that are being cast have raised concerns from this [c]ourt at this point. So, I need you to be very careful about the aspersions, the statements that you are making going beyond the evidence.
>
> . . . .

> Counsel, this jury is not called upon to decide what could have gone wrong. They are called upon to decide the charges of possession of cocaine, possession of heroin, unlawful possession of a weapon. The aspersions being cast about what potentially could happen in the future are not within the four corners of this case. It is not within the jury's purview. They don't need to be considering that. So, I am just asking you to be careful of where you are going.

Defendant now argues the prosecutor's unfounded accusations about his intoxication at the time of his arrest were not properly cured by the judge, which should have repeated a limiting instruction to the jury. Defendant further contends the prosecutor's allusion to the "protection of the public" when referring to the danger of defendant possessing drugs and a loaded gun was improper as "nothing less than a call to arms which could only have been intended to promote a sense of partisanship incompatible with [the juror's] duties." State v. Holmes, 255 N.J. Super. 248, 251-52 (App. Div. 1992). Defendant maintains the prosecutor's comments were akin to those stated in Holmes concerning the "war on drugs" to incite the jury by drawing a connection between the defendant and larger social issues. Id. at 251. The protection of the public comment also invited the jury to speculate about other potentially dangerous scenarios, which were necessarily outside the record.

Defendant maintains the judge's curative action in striking the prosecutor's intoxication remarks from the record was insufficient considering the collective impact of the prosecutor's conduct throughout the trial. Furthermore, like Frost, the general jury instruction concerning the scope of evidence was insufficient "to overcome the potential prejudicial nature of the prosecutor's improper remarks." 158 N.J. at 86-87. Finally, defendant asserts the judge's failure to give an appropriate curative instruction constituted reversable error because the prosecutor's remarks undermined the two central issues in the case, namely, the officers' credibility and the defense's theory of the case.

A prosecutor is "duty bound to confine his comments to facts revealed during the trial and reasonable inferences to be drawn from that evidence." State v. Acker, 265 N.J. Super. 351, 357 (App. Div. 1993) (citing State v. Marks, 201 N.J. Super. 514, 534 (App. Div. 1985)). Given the prosecutor's role, their "improper suggestions, insinuations and . . . assertions of personal knowledge are apt to carry much weight against the accused . . . ." Berger v. United States, 295 U.S. 78, 88 (1935).

The prosecutor's comment about defendant's intoxication at the time of his arrest was inappropriate but was properly cured. The trial judge struck the

comment from the record and directed the jury to disregard the commentary on defendant's intoxication because it lacked evidentiary support.

The jury is presumed to have followed the judge's instructions. See State v. Burns, 192 N.J. 312, 335 (2007) (citation omitted). Although the prosecutor continued stating that defendant was smoking marijuana prior to his arrest, his statements were based on the undisputed facts presented to the jury and not objected to by defense counsel. See Acker, 265 N.J. Super. at 357 (recognizing a prosecutor is "duty bound to confine his comments to facts revealed during the trial and reasonable inferences to be drawn from that evidence."). As such, they were not improper.

The prosecutor's mention of the danger defendant posed, and the "protection of the public" was not objected to, by defense counsel. Defense counsel's lack of objection is evidence this was not viewed as prejudicial. Frost, 158 N.J. at 83. The judge sua sponte directed a sidebar where he cautioned the prosecutor from making potentially improper comments. See State v. Cordero, 438 N.J. Super. 472, 489-91 (App. Div. 2014) (recognizing a prosecutor "[w]ithin reasonable limitations . . . should be permitted to observe the serious social consequences of the crime charged." (quoting State v. Perry, 65 N.J. 45, 48 (1974))). The prosecutor's summation comments were not so inflammatory

as to serve as an impermissible "call to arms." Holmes, 255 N.J. Super. at 251-252.

Although the judge did not provide a curative instruction to the jury, this was a harmless error. Our Supreme Court held in Williams, "whether an error is harmless depends upon some degree of possibility that it led to an unjust verdict. The possibility must be real, one sufficient to raise a reasonable doubt as to whether the error led the jury to a result it otherwise might not have reached." 244 N.J. at 608 (quoting State v. Bankston, 63 N.J. 263, 273 (1973)). The prosecutor's comments were a fleeting, minor part of the prosecutor's closing and, in light of the overall weight of the evidence, unlikely to have led to an unfair trial. See State v. Wakefield, 190 N.J. 397, 437-38 (2007). The case is similar to Perry, where the Court found a prosecutor's mention of the social consequences of police corruption were not misconduct because defense counsel did not object and "the comments comprised an insignificant portion of a summation . . . ." 65 N.J. at 54. Therefore, the prosecutor's remarks concerning defendant's intoxication were properly cured and the protection of the public comment was harmless.

D.

Defendant argues the cumulative effect of the previously discussed misconduct deprived him of due process and a fair trial. The combined effect of "[s]uch egregious and systematic misconduct, coupled with the lack of direct evidence" cannot be harmless beyond a reasonable doubt and, as such, his convictions should be reversed, and a new trial is required.

To be sure, it is well established that "[e]ven if an individual error does not require reversal, the cumulative effect of a series of errors can cast doubt on a verdict and call for a new trial." State v. Sanchez-Medina, 231 N.J. 452, 469 (2018) (citing State v. Jenewicz, 193 N.J. 440, 473 (2008)). However, as noted above, there is no error in any of the matters asserted in this appeal. And so, there is no merit in defendant's cumulative error argument.

Affirmed.