

Thomas RONIO *v.* STATE of Arkansas

CA CR 79-146

600 S.W. 2d 31

Court of Appeals of Arkansas
Opinion delivered May 21, 1980
Released for publication June 11, 1980

CRIMINAL LAW — CONTROLLED SUBSTANCES — EXPRESSION OF OPINION IN CLOSING ARGUMENTS. — In the case at bar, appellant was not prejudiced by the deputy prosecuting attorney's remark in his closing argument that he felt sorry for children who got the marijuana habit, as it was an expression of opinion regarding one of the harmful effects of illicit drugs and was a matter within the jury's common and general knowledge.

Appeal from Van Buren Circuit Court, *George F. Hartje*, Judge; affirmed.

R. L. Walloch, for appellant.

Steve Clark, Atty. Gen., by: *Victoria L. Fewell*, Asst. Atty. Gen., for appellee.

MARIAN F. PENIX, Judge. Thomas Ronio, appellant, was found guilty by a jury of Manufacturing a Controlled Substance. He was sentenced to two years imprisonment and fined five thousand dollars. Ronio appeals.

Pursuant to a Search and Seizure Warrant, Ronio's home and yard were searched June 5, 1979. Items seized were bags of marijuana and approximately 300 plants of marijuana. Ronio was charged with the crime of Manufacturing a Controlled Substance.

Ronio alleges he was not afforded a fair trial because of highly prejudicial statements made to the jury by the prosecuting attorney.

In his closing argument the prosecutor remarked he felt sorry for children who got the marijuana habit. The defense counsel objected stating "There is nothing introduced in evidence he has sold anything to children. This is highly prejudicial."

The Court stated:

The jury will be admonished as I instructed you while ago closing arguments are not evidence. You can and should disregard anything. Mr. Brazil might say that is not based on fact.

There was no evidence presented at the trial as to sales of marijuana to children. We must determine whether Ronio was prejudiced by the remark made by the prosecutor.

In the case of *Hall v. State*, 264 Ark. 885, 576 S.W. 2d 178 (1979), the Deputy Prosecuting Attorney, in his argument to the jury, stated that heroin is the worst of drugs and made reference to the deterioration of the community due to its young people injecting heroin into their bodies. The accused, who was charged with a single sale of heroin, moved for a mistrial. In his concurring opinion, Justice Fogleman agreed with the majority that it is not prejudicial for an attorney to make comments which are a matter of common and general knowledge.

In the recent case of *Hays v. State*, 268 Ark. 701, 597 S.W. 2d 821 (Ark. App. 1980) the Prosecuting Attorney in closing argument mentioned the detrimental effects of marijuana upon high school students. Our Court held the comments to be essentially the mere expression of an opinion and not offered as statement of fact outside the record.

In the instant case, we find the Prosecutor's remarks to be an expression of opinion regarding one of the harmful effects of illicit drugs and also a matter within the jury's common and general knowledge.

We find no prejudice. The decision is affirmed.

Affirmed.