

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH A. ANDREWS,

Defendant-Appellant.

UNPUBLISHED
February 20, 2001

No. 219696
Wayne Circuit Court
LC No. 98-006674

Before: Whitbeck, P.J., and Murphy and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right his jury conviction of five counts of first-degree criminal sexual conduct, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a). This case involves an alleged secret sexual relationship between defendant and the complainant, his twelve-year-old niece. We affirm.

Defendant first argues that prosecutorial remarks during closing argument constituted misconduct. We disagree.

Defendant contends that comments about his adulterous lifestyle improperly denigrated him, that the prosecutor vouched for the complainant's credibility, and that the prosecutor shifted the burden of proof to defendant to prove that he and his alibi witness were telling the truth. Because defendant did not object to any of the challenged remarks, review is precluded unless a curative instruction could not have eliminated any prejudicial effect or where failure to consider the issue would result in a miscarriage of justice. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). This Court reviews allegedly improper remarks on a case-by-case basis, examining the pertinent portion of the record and evaluating the remarks in context. *People v Noble*, 238 Mich App 647, 660; 608 NW2d 123 (1999). Prosecutorial comments must be read as a whole and evaluated in light of defense arguments and the relationship they bear to the evidence admitted at trial. *People v Schutte*, 240 Mich App 713, 721; 613 NW2d 370 (2000).

We first note that defendant brought up his amorous lifestyle as a possible defense, contending that he would have no interest in the complainant because he had more than enough sexual partners. Accordingly, the prosecutor's remarks in this area were supported by and represent reasonable inferences arising from that evidence. *Id.* Any possible prejudice could have been alleviated by a curative instruction. *Stanaway, supra.*

Next, we find that the prosecutor did not improperly vouch for the complainant's credibility. A prosecutor may not personally vouch for the credibility of a witness by implying that he has some special knowledge that the witness is testifying truthfully. *People v Bahoda*, 448 Mich 261, 276; 531 NW2d 659 (1995). Examining the contested statements in context, the prosecutor did not imply any special knowledge of the complainant's credibility. Rather, he merely suggested that the jury consider whether the complainant had a motive to lie.

Lastly, it must be recognized that defendant called his girlfriend as a witness who would provide an alibi. She testified that she could verify his whereabouts all day, every day on the alleged dates of the offenses. A prosecutor may comment on the weakness of a defendant's alibi. See *People v Spivey*, 202 Mich App 719, 723; 509 NW2d 908 (1993). In addition, the prosecutor may argue from the evidence that a witness is unworthy of belief. *People v Howard*, 226 Mich App 528, 548; 575 NW2d 16 (1997). Here, the prosecutor was free to argue from the evidence that defendant's girlfriend's testimony was incredible. There was no miscarriage of justice. *Stanaway, supra*.

Defendant additionally argues that he was denied due process because there was insufficient evidence to convict. We again disagree.

This criminal sexual conduct case presented a classic credibility contest between defendant and the complainant. Questions of credibility are left to the trier of fact and will not be resolved anew by this Court. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). There is no question that the complainant was twelve years old at the time of the alleged liaisons. Accordingly, the complainant's testimony, if believed, was sufficient for the jury to determine that penetration took place and sufficient for conviction of first-degree criminal sexual conduct. See *People v Robideau*, 94 Mich App 663, 674; 289 NW2d 846 (1980). This Court will not impose its judgment on the jury's obvious determination that the complainant was more credible than defendant. *Avant, supra*.

Affirmed.

/s/ William C. Whitbeck
/s/ William B. Murphy
/s/ Jessica R. Cooper