

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANIEL LUEVANOS,

Defendant-Appellant.

UNPUBLISHED

November 19, 2002

No. 230000

Wayne Circuit Court

LC No. 99-006658

Before: Murray, P.J., and Cavanagh and Bandstra, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction for armed robbery, MCL 750.529. We affirm.

On appeal, defendant claims that prosecutorial misconduct deprived him of his right to a fair trial. We disagree. Generally, claims of prosecutorial misconduct are reviewed de novo to determine whether the defendant was denied a fair and impartial trial. *People v Pfaffle*, 246 Mich App 282, 288; 632 NW2d 162 (2001).

First, defendant argues that the prosecutor deprived him of a fair trial by asking him to testify regarding the credibility of other witnesses. On two separate occasions, defendant was asked whether witnesses testifying against him were lying, to which defendant responded “yes.” Because defendant failed to object to these questions at trial, this issue is reviewed for plain error affecting his substantial rights. See *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Although it may have been improper for the prosecutor to question defendant as to the credibility of other witnesses, *People v Buckey*, 424 Mich 1, 17; 378 NW2d 432 (1985), any error could have been cured by a limiting instruction from the trial court. See *id.* at 18; *People v Schutte*, 240 Mich App 713, 721; 613 NW2d 370 (2000). Therefore, defendant failed to show plain error warranting reversal.

Second, defendant argues that the prosecutor improperly vouched for the credibility of prosecution witnesses and offered his personal views of the case to the jury, particularly because he said “I think” several times. After examining the contested remarks in context, we disagree. See *People v Bahoda*, 448 Mich 261, 266-267; 531 NW2d 659 (1995); *People v Noble*, 238 Mich App 647, 660; 608 NW2d 123 (1999).

A prosecutor may argue that certain evidence is uncontradicted and may contest evidence presented by defendant. Further, although a prosecutor may not vouch for the credibility of a witness by implying that he has some special knowledge concerning the witness' truthfulness, *Bahoda, supra* at 276, the prosecutor may argue that a witness should be believed based on the facts of the case. See *Schutte, supra* at 722. Here, the prosecutor's use of the phrase "I think" was not in a manner that implied that he had personal knowledge of a witness' truthfulness; rather, it reflected a habit of speech. Further, any reference to the credibility of the witnesses was based on the facts of the case and evidence produced at trial rather than the prosecutor's knowledge or opinion. In addition, on objection to the prosecutor's remarks, the trial judge admonished the prosecutor not to state his personal opinions. The trial court also instructed the jury that arguments of the attorneys are not evidence. Even assuming, *arguendo*, that the prosecutor improperly offered his personal views, these instructions from the bench were sufficient to dispel any prejudice defendant suffered. See *Bahoda, supra* at 281.

Affirmed.

/s/ Christopher M. Murray

/s/ Mark J. Cavanagh

/s/ Richard A. Bandstra