

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEMARKO LAVONE HAWTHORNE,

Defendant-Appellant.

UNPUBLISHED

April 20, 2004

No. 245504

Wayne Circuit Court

LC No. 02-004072

Before: Wilder, P.J., and Hoekstra and Kelly, JJ.

PER CURIAM.

Defendant was convicted by jury of possession of a short-barreled shotgun, MCL 750.224b, and possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v). The trial court sentenced defendant to complete a two-year term of probation with confinement in the county jail for the first six months. On appeal, defendant makes claims of prosecutorial misconduct, insufficient evidence to support the convictions, and abuse of discretion by the trial court for allowing the prosecutor to reopen proofs. We find defendant's claims without merit and affirm.

This case arose from the events surrounding the execution of a search warrant at a house in Detroit on March 3, 2002. A police officer testified that upon entering the premises he found defendant sitting at a table and he observed defendant brush Ziplock baggies containing suspected narcotics off the table. The officer also observed a shotgun on the table. Another officer testified that he took the weapon from the table and unloaded it. In addition, during the search police located approximately \$2,500 that they believed was drug money. These items were seized and later tests confirmed that the suspected narcotics was cocaine. The parties stipulated that the barrel of the gun was less than eighteen inches. Defendant and his girlfriend, who was present during the raid, testified for the defense.

On appeal, defendant claims that the prosecutor's arguments to the jury and cross-examination of a defense witness were improper and that as a consequence, defendant is entitled to either dismissal or a new trial. We disagree.

Because no objections were raised at trial to the alleged incidents of prosecutorial misconduct, they are unpreserved. Therefore, we review defendant's claims for plain error that affected his substantial rights. *People v Ackerman*, 257 Mich App 434, 448; 669 NW2d 818 (2003). Reversal is warranted only if we determine that, although defendant was actually

innocent, the plain error caused him to be convicted, or if the error seriously affect the fairness, integrity, or public reputation of the judicial proceedings, regardless of innocence. *Id.* at 448-449.

Defendant's first claim of prosecutorial misconduct is that the prosecutor's closing arguments shifted the burden of proof to defendant to show that he did not live in the house that was raided. A prosecutor may not suggest that the defendant must prove something because such an argument tends to shift the burden of proof. See *People v Fields*, 450 Mich 94, 113-115; 538 NW2d 356 (1995). However, a prosecutor may argue from the facts that the defendant is not worthy of belief. *People v Howard*, 226 Mich App 528, 548; 575 NW2d 16 (1997). Further, "[a] prosecutor's comments must be considered in light of defense arguments." *People v Messenger*, 221 Mich App 171, 181; 561 NW2d 463 (1997). Here, the challenged remarks were made during the prosecutor's rebuttal argument and were a response to defense counsel's claim that defendant's driver's license and identification card, which were admitted into evidence, established that defendant did not reside at the incident address. Evaluated in this context, the arguments did not shift the burden of proof, but rather, were a permissible response to defense counsel's argument.

Next, defendant maintains that the prosecutor's cross-examination of defendant's girlfriend, LaShonda Boyd, who was present in the room with defendant during the execution of the search warrant, was improper because the prosecutor suggested that the incident address was owned by Boyd's or defendant's relatives "when there was no evidence on direct examination that anyone in [d]efendant's family owned the home." However, defendant only announces his claim and offers no analysis or authority to support. Consequently, it is abandoned. *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998) ("An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority.").

Defendant also argues that the prosecutor's assertions that the police had no reason to lie and that "[d]efendant was guilty because the police had a search warrant 'signed by an assistant prosecutor and a judge'" were improper because they implied that the prosecutor or police have special knowledge of defendant's guilt. Defendant does not explain his assertion of special knowledge, nor does he cite us to any authority in support of his claim of special knowledge. Further, we do not discern from our review of the portion of the trial transcript to which defendant refers us any reason to conclude that the prosecutor's argument implied special knowledge. While a prosecutor may not suggest that the government has some special knowledge that a witness will testify truthfully, *People v Knapp*, 244 Mich App 361, 382; 624 NW2d 227 (2001), nor place the prestige of the police behind his argument that a defendant is guilty, *People v Rodriguez*, 251 Mich App 10, 31; 650 NW2d 96 (2002); *People v Lucas*, 138 Mich App 212, 221; 360 NW2d 162 (1984), clearly "a prosecutor may comment on his own witnesses' credibility during closing argument, especially when there is conflicting evidence and the question of the defendant's guilt depends on which witness the jury believes." *People v Thomas*, __ Mich App __, __; __ NW2d __ (2004) [Docket No. 243817, rel'd 02/03/04]. Here, the comments about the police motives to lie properly addressed credibility and the reference to the signatures on the search warrant did not convey an inference that defendant is guilty as argued by defendant. In sum, defendant's claims of prosecutorial misconduct are without merit.

Next, defendant argues that the evidence at trial was insufficient to support his convictions of possession of cocaine and possession of a short-barreled shotgun. We disagree.

Defendant's challenge to the sufficiency of the evidence is not based on an assertion that the prosecution failed to offer evidence in support of the elements of the charged offenses or to identify defendant as the perpetrator. Rather, defendant maintains that "the evidence raised serious doubts about the credibility of the prosecution's witnesses." Defendant offers as support for his challenge to the police witnesses' credibility the absence of defendant's fingerprints on the shotgun or the narcotics, the failure of the police to find the marked funds used to make the controlled buy, the lack of any evidence that defendant lived at the incident location, other than statements allegedly made to police, and the admitted fact that the controlled buy was made with a person other than defendant. With regard to the shotgun, defendant argues that the police gave inconsistent testimony about the location of the shotgun. On the basis of these claims regarding the evidence, defendant asks this court to reverse his convictions.

But in making this argument defendant fails to acknowledge the well-settled law that this Court should not interfere with the jury's role of determining the weight of evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1201 (1992). All of defendant's claims of insufficiency of the evidence arise from alleged deficiencies in the evidence or challenges to witnesses' credibility and are issues that are properly addressed to the jury and are for the jury, not this Court, to resolve. Despite the alleged deficiencies and inconsistencies, the jury was free to conclude that the police testimony was credible and the reasonable inference of all the evidence established defendant's guilt. Accordingly, we find without merit defendant's claim that the evidence is insufficient to support his convictions.

Finally, defendant argues that the trial court abused its discretion in allowing the prosecutor to reopen proofs after both the prosecution and defendant had rested. We disagree.

We review the decision of the trial court to reopen proofs for abuse of discretion. *People v Herndon*, 246 Mich App 371, 419; 633 NW2d 376 (2001). Relevant considerations for reopening proofs are whether any undue advantage would be taken by the moving party and whether the nonmoving party can show surprise or prejudice. *Id.* at 420.

In this case, defendant moved for a directed verdict on the charge of possession of a short-barreled shotgun, claiming that the prosecution's proofs failed to establish the length of the barrel or the overall length of the shotgun. Because the shotgun itself had already been admitted into evidence, the trial court permitted the proofs to be reopened and the parties stipulated to the measurements of the length of the barrel. Under these circumstances, we find no abuse of discretion.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Joel P. Hoekstra
/s/ Kirsten Frank Kelly