

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID L. GRIFFIN,

Defendant-Appellant.

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UNPUBLISHED

July 13, 2004

No. 245494

Wayne Circuit Court

LC No. 01-006036

Before: Murphy, P.J., and Griffin and White, JJ.

PER CURIAM.

Defendant was convicted by a jury of assault with a dangerous weapon, MCL 750.82.<sup>1</sup> He appeals as of right, and we affirm.

Defendant claims that he was denied his due process right to a fair trial when the prosecutor engaged in misconduct in closing argument. We disagree.

We review preserved claims of prosecutorial misconduct de novo to determine if defendant was denied a fair and impartial trial. *People v Akins*, 259 Mich App 545, 562; 675 NW2d 863 (2003); *People v Ackerman*, 257 Mich App 434, 448; 669 NW2d 818 (2003). Our review is on a case-by-case basis, and we read prosecutorial statements within the context of the case and in light of defense arguments. *People v Rodriguez*, 251 Mich App 10, 30; 650 NW2d 96 (2002).

Defendant claims that the prosecutor engaged in misconduct by referring to defendant and a defense witness as liars and by vouching for the credibility of the prosecutor's witnesses. Defendant asserts that the prosecutor's remarks improperly influenced and prejudiced the jury in a case where jury determination of witness credibility was critical. Defendant also claims that the trial court failed to rule on defense counsel's objection to the prosecutor's remarks, and failed to give a cautionary instruction to the jury. Defendant further contends that, even if the trial court had given a cautionary instruction, the instruction would have been insufficient to cure the resulting prejudice to defendant's case.

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<sup>1</sup> Defendant was originally charged with two counts of assault with a dangerous weapon, MCL 750.82, and one count of carrying a concealed weapon, MCL 750.227.

Prosecutorial vouching occurs when a prosecutor makes personal assurances of a witness' veracity or when a prosecutor claims to have personal information of which the jury is unaware, lending to the credibility of a witness. *People v Bahoda*, 448 Mich 261, 276; 531 NW2d 659 (1995); *People v Flanagan*, 129 Mich App 786, 795; 342 NW2d 609 (1983). A prosecutor must argue the evidence and may not request the jury find the defendant guilty based on the prosecutor's special knowledge or the prestige of his office. *People v Reed*, 449 Mich 375, 398-399; 535 NW2d 496 (1995). However, a prosecutor is permitted to argue the evidence and may make reasonable inferences from the facts as they relate to his theory of the case. *People v Gonzalez*, 178 Mich App 526, 535; 444 NW2d 228 (1989). A prosecutor is also permitted to argue from the evidence that a witness is worthy or not worthy of belief. *People v Launsbury*, 217 Mich App 358, 361; 551 NW2d 460 (1996). During closing argument a prosecutor is permitted to remark about the credibility of a witness, particularly when conflicting testimony exists. *Flanagan, supra*, 129 Mich App 795-796. The propriety of a prosecutor's closing argument must be determined as a whole and in light of the defendant's arguments and positions. See *Bahoda, supra*, 448 Mich 283; *People v Schultz*, 246 Mich App 695, 710; 635 NW2d 491 (2001); *Gonzalez, supra*, 178 Mich App 535.

In the instant case, defendant's guilt or innocence was dependent upon which version of the events the jury believed. Defendant presented testimonial evidence to prove his theory of the case: that he used the pipe in self-defense. The prosecutor also presented testimonial evidence to prove its theory of the case: that defendant assaulted Mark Alston and Ernest Alston with a pipe and gun without provocation.

During closing argument, the prosecutor commented on the credibility of Mark and Ernest. The prosecutor's comments were intended to assert that minor discrepancies in the testimony of several witnesses to the same event lent credibility to their testimony. Further, the prosecutor argued that Mark and Ernest were credible based on their testimony. The prosecutor commented that, because Mark testified that defendant had a gun in his pocket and not that defendant pointed a gun at Mark, the jury could infer Mark was honest. Likewise, the prosecutor emphasized that Ernest's admission to throwing a brick at defendant and to peeling the gun from both Mark's and defendant's hands implied that his testimony was credible. Verbalizing the conclusion that prosecution witnesses are being truthful is not impermissible where that conclusion is based on the evidence and not on some implication of special knowledge.

It was not improper for the prosecutor to contrast defendant's witness' testimony regarding whether defendant was bleeding with the police officer's testimony. While defendant characterizes the prosecutor's argument as being an assertion that the testimony must be a lie because the police officer testified otherwise, the prosecutor did not so argue.

Also during closing argument, the prosecutor referred to defendant's conflicting accounts of the events. The prosecutor's remarks regarding defendant's dishonesty on the stand were responsive to defense counsel's argument that defendant's testimony was credible because he admitted to having the pipe. The prosecutor argued from the evidence that the police officer found defendant unharmed and, consequently, that the jury could infer that the defense witness' testimony, that defendant was bleeding, was unreliable.

We conclude that, when taken as a whole, the prosecutor's remarks during closing argument were proper because defendant's guilt or innocence rested on which witnesses and

version of the events the jury found more credible. *Flanagan, supra*, at 795-796. The prosecutor did not vouch for the credibility of a witness. He never implied that he had personal knowledge regarding the veracity of a witness' testimony. Further, the prosecutor's comments regarding defendant and the defense witness were based on the evidence and responsive to defendant's arguments and position.

Moreover, we conclude that the trial court's cautionary instructions to the jury that the jury was to determine the credibility of the witnesses and that the jury was not to consider counsels' statements and arguments as evidence were sufficient to cure any prejudice caused by the prosecutor's remarks.

Affirmed.

/s/ William B. Murphy  
/s/ Richard Allen Griffin  
/s/ Helene N. White