

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEVIN LEE MAST,

Defendant-Appellant.

UNPUBLISHED
November 9, 2004

No. 248951
Allegan Circuit Court
LC Nos. 01-012244-FH;
01-012245-FH

Before: Murray, P.J., and Sawyer and Smolenski, JJ.

MEMORANDUM.

Defendant appeals as of right his convictions of two counts of criminal sexual conduct in the second degree (CSC II), the victim being under thirteen years of age, MCL 750.520c(1)(a), entered after a jury trial. We affirm.

Defendant's daughters alleged that he repeatedly touched their buttocks and vaginas over a period of several months. The children's testimony that they reported the abuse to their mother while it was ongoing and during their first interviews with a therapist contradicted the testimony given by their mother and their remarks during the interviews, which were played for the jury.

The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001). 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 review a claim of prosecutorial misconduct de novo. *People v Pfaffle*, 246 Mich App 282, 288; 632 NW2d 162 (2001).

Defendant argues that the prosecutor denied him a fair trial by calling a therapist to bolster the credibility of the children and by personally vouching for the credibility of the children during rebuttal closing argument. We disagree and affirm defendant's convictions. Defendant did not object to the testimony given by the therapist or to the prosecutor's argument; therefore, absent plain error, he is not entitled to relief. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). An expert in a child sexual abuse case may not vouch for the credibility of the child or opine that the defendant is guilty, but may testify that the child's behavior was consistent with that of a sexually abused child. *People v Peterson*, 450 Mich 349, 352, 373-374; 537 NW2d 857 (1995), amended 450 Mich 1212; 548 NW2d 625 (1995). Defendant's theory was that the children's mother prompted the children to fabricate the

allegations against him. He introduced the therapist's videotaped interviews with the children to demonstrate that they did not disclose the abuse when first given an opportunity to do so. In turn, the prosecutor properly elicited testimony from the therapist to the effect that it is normal for a child to delay reporting an incident of sexual abuse. *Id.*

A prosecutor may not vouch for the credibility of a witness by implying that he or she has some special knowledge that the witness is testifying truthfully, *People v Bahoda*, 448 Mich 261, 276; 531 NW2d 659 (1995), but may argue from the facts that a witness is worthy of belief. *People v Thomas*, 260 Mich App 450, 455; 678 NW2d 631 (2004). The prosecutor properly argued that although the children might have been confused as to some details of the alleged incidents of abuse, their testimony was credible because their general allegations were consistent and their behavior was typical of abused children. Any prejudice created by these remarks could have been cured by an instruction that witness credibility was a jury issue. *People v Leshaj*, 249 Mich App 417, 419; 641 NW2d 872 (2002). No plain error occurred. *Carines, supra*.

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Michael R. Smolenski