

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
January 19, 2012

v

GEORGE HUDGENS,

No. 300335
Wayne Circuit Court
LC No. 10-000313-FC

Defendant-Appellant.

Before: GLEICHER, P.J., and CAVANAGH and O'CONNELL, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of second-degree murder, MCL 750.317, and one count each of assault with intent to commit murder, MCL 750.83, felonious assault, MCL 750.82, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. He appeals by right. We affirm.

On August 4, 2009, defendant shot three men in a townhouse where marijuana was being sold. Two of the men died. A third man, Kenneth Towns, was shot once in the head and survived. Another man, Robert Hightower, was present at the time of the shootings, but escaped. The defense theory at trial was self-defense.

Defendant argues that the following remarks by the prosecutor during closing and rebuttal arguments were improper and denied him a fair trial.

Now Mr. Hudgens wants us to say that, 'Oh, but he [Towns] was going for a weapon', and there is absolutely no evidence of a weapon; none, zero, zip. Nothing. Mr. Hudgens – and I pointed this out when I asked him questions, had six weeks – give or take, to make up a story. He's had six weeks to convince himself of what he wants to be convinced of and he's lying. He is flat out lying to us.

* * *

Further, Ladies and Gentlemen – and this really, really matters. He – Mr. Hudgens, had six weeks to come up with this story. He had six weeks to come up with an absolute lie. If you believe Mr. Hudgens then you will do justice. If you

believe Mr. Hightower and Mr. Towns you will do justice. Whatever you decide is justice.

Defendant did not object to these remarks at trial, leaving this issue unpreserved. *People v Unger*, 278 Mich App 210, 235; 749 NW2d 272 (2008). Unpreserved claims of prosecutorial misconduct are reviewed under the plain error test of *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Defendant has the burden of establishing that a plain error affected his substantial rights. *Id.*

In *People v Howard*, 226 Mich App 528, 548; 575 NW2d 16 (1997), this Court explained:

A prosecutor may not vouch for the credibility of a witness, nor suggest that the government has some special knowledge that the witness is testifying truthfully. [*People v Bahoda*, 448 Mich. 261, 276; 531 NW2d 659 (1995).] A prosecutor may, however, argue from the facts that a witness is credible or that the defendant or another witness is not worthy of belief. *People v Launsbury*, 217 Mich App 358, 361; 551 NW2d 460 (1996); *People v Jones*, 60 Mich App 681, 686; 233 NW2d 22 (1975).

“[A]rgument on the credibility of witnesses should not be based on the superior knowledge of the attorney of the facts or the evidence not in the case.” *People v Couch*, 49 Mich App 69, 72; 211 NW2d 250 (1973).

The prosecutor’s remarks in this case did not suggest that the prosecutor had superior knowledge about the credibility of the witnesses or knowledge of evidence that was not admitted. The prosecutor merely stated that defendant had the opportunity to contrive a story before he spoke to the police, and that defendant lacked credibility. Our courts have approved of similar arguments in other cases. See, e.g., *People v Pegenau*, 447 Mich 278, 299; 523 NW2d 325 (1994) (“The prosecution is permitted to comment on and draw inferences from the testimony of a witness, including a criminal defendant, and may argue that the witness is not worthy of belief.”); *Couch*, 49 Mich App at 72 (referring to the defendant’s testimony as a “conjured up story” and “parade of lies”); and *People v Cowell*, 44 Mich App 623, 628; 205 NW2d 600 (1973) (argument that the defendant was lying). Accordingly, defendant has failed to establish that the challenged remarks were improper, and thus there was no plain error.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Mark J. Cavanagh
/s/ Peter D. O’Connell