

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RUSSELL SHANE COTTRELL,

Defendant-Appellant.

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UNPUBLISHED

November 21, 2006

No. 263623

Monroe Circuit Court

LC No. 04-034158-FH

Before: White, P.J. and Zahra and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right his convictions of driving while license suspended, second offense, MCL 257.904(3), and resisting or obstructing a police officer, MCL 750.479, entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Monroe County Deputy Sheriffs testified that defendant, whose vehicle had been stopped because it did not appear to have a license plate, exhibited aggressive behavior, told them they would have to use force to arrest him, called them racists, and hit his vehicle with his hands with such force that the rear window shattered. A LIEN check confirmed that defendant was driving with a suspended license. After defendant was taken into custody, a search of his vehicle revealed a paper license plate on the back interior deck below the rear window.

Defendant testified that he became angry after his vehicle was stopped, but denied indicating that he would resist arrest. He maintained that the paper plate was taped to his rear window, and was clearly visible. He acknowledged that he called the officers racists, and that when he slammed his hands on his vehicle, the rear window shattered. Defendant claimed that he never received notice that his license had been suspended.

During closing argument, the prosecutor observed that the deputies and defendant gave dramatically different versions of the events that lead to defendant's arrest. The prosecutor noted that the credibility of the witnesses was for the jury to determine, but asserted that the deputies had no reason to lie, and remarked regarding defendant's testimony, "I don't think his testimony is worth five minutes of your deliberation." Defense counsel did not object to this statement.

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). We review a

claim of prosecutorial misconduct de novo. *People v Pfaffle*, 246 Mich App 282, 288; 632 NW2d 162 (2001). Absent an objection at trial to the alleged misconduct, appellate review is foreclosed unless the defendant demonstrates the existence of plain error that affected his substantial rights. Reversal is warranted only when plain error resulted in the conviction of an actually innocent defendant or seriously affected the fairness, integrity, or public reputation of judicial proceedings. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Defendant argues that he was denied a fair trial by the prosecutor's comment that his testimony was not worth the jury's consideration, and that the comment resulted in plain error. We disagree.

This case amounted to a credibility contest between the deputies and defendant. During closing argument, the prosecutor noted the testimony given by the deputies, asserted that the deputies had no reason to lie, and then made the remark about which defendant complains on appeal. A prosecutor may properly argue that witnesses, including the defendant, are not worthy of belief. *People v Launsbury*, 217 Mich App 358, 361; 551 NW2d 460 (1996). Any prejudicial effect created by the prosecutor's comment could have been cured by a timely instruction. *People v Leshaj*, 249 Mich App 417, 419; 641 NW2d 872 (2002). Moreover, the trial court instructed the jury that the lawyers' arguments were not evidence, and that the jury was entitled to assess the credibility of witnesses. No reversible error occurred. *Carines*, *supra*.

Affirmed.

/s/ Helene N. White  
/s/ Brian K. Zahra  
/s/ Kirsten Frank Kelly