

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FRANK ANTHONY MICHAUX,

Defendant-Appellant.

UNPUBLISHED
February 24, 2009

No. 282482
Wayne Circuit Court
LC No. 07-011998-FC

Before: Whitbeck, P.J., and O’Connell and Owens, JJ.

PER CURIAM.

After a jury trial, defendant Frank Anthony Michaux was convicted of one count of assault with intent to do great bodily harm less than murder, MCL 750.84, and three counts of felonious assault, MCL 750.82. He was sentenced as a third habitual offender, MCL 769.11, to concurrent terms of 66 to 120 months’ imprisonment for the assault with intent to do great bodily harm conviction and two to four years’ imprisonment for each felonious assault conviction. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant’s convictions arise from an altercation that occurred at Stephanie McIver’s residence in Detroit on the weekend of July 4, 2007. McIver hosted a barbeque at her home, which she shared with defendant. In the early morning hours of July 5, 2007, defendant appeared intoxicated or “high” and became belligerent toward McIver’s visitors. He stabbed Angelo Henry in the stomach with a knife during an argument and then swung the knife in Kharletta McIver’s face, saying, “I’ll stab you too.” He then threatened Jasmine Henry and Tajuana Henry with the knife when they approached him.

First, defendant argues that the prosecutor’s comments and questioning regarding his alleged drug use before the incident denied him his right to a fair trial. We disagree. Generally, we review claims of prosecutorial misconduct de novo to determine whether a defendant was denied a fair and impartial trial. *People v Cox*, 268 Mich App 440, 450-451; 709 NW2d 152 (2005). But because defendant failed to preserve this issue for appellate review by challenging the alleged instances of prosecutorial misconduct, our review is limited to plain error affecting defendant’s substantial rights. *Id.* at 451. “When reviewing a claim of prosecutorial misconduct, we examine the pertinent portion of the record and evaluate a prosecutor’s remarks in context.” *Id.*

During his opening statement, the prosecutor stated that defendant was “high on toxic substances” and that his intoxication affected his behavior. During questioning, the prosecutor repeatedly elicited testimony from witnesses regarding whether defendant was “high.” Further, during his closing argument and rebuttal, the prosecutor again indicated that defendant was “on something” and that he visited a “crack house” four or five times throughout the day before the incident occurred.

Defendant argues that the prosecutor’s remarks and questions were inflammatory and meant merely to arouse the passions of the jurors. On the contrary, the prosecutor’s comments and questions were directly related to his theory of the case and the evidence presented. The prosecutor’s theory was that defendant became argumentative and violent only after he used drugs that night. Witnesses described defendant as having a “crazy look” on his face, slurred speech, bulging and red eyes, and a foaming mouth. Witnesses also testified that defendant repeatedly left the barbeque on a bicycle and returned shortly thereafter. Angelo Henry testified that he saw defendant arrive at a nearby drug house on a bicycle and go into the house. He saw defendant go into the drug house approximately five times throughout the day. The prosecutor’s remarks and questions pertained to his theory of the case and the evidence presented. “Prosecutors cannot make statements of fact unsupported by the evidence, but remain free to argue the evidence and all reasonable inferences arising from it as they relate to the theory of the case.” *People v Schultz*, 246 Mich App 695, 710; 635 NW2d 491 (2001). Accordingly, the prosecutor’s remarks and questions did not constitute misconduct.

Defendant also argues that the prosecutor improperly stated that certain witnesses were telling the truth. A prosecutor cannot vouch for a witness’s credibility or imply that he has special knowledge that a witness’s testimony is true. *People v Knapp*, 244 Mich App 361, 382; 624 NW2d 227 (2001). “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 Howard*, 226 Mich App 528, 548; 575 NW2d 16 (1997).

During rebuttal argument, the prosecutor stated:

Now I disagree on what Counsel suggests your job is. Your job is to determine what the credible evidence is and then to determine from the credible evidence whether or not the elements have been borne out.

I’m here to tell you [Stephanie McIver] didn’t tell you the truth for obvious reasons. I’m here to tell you that Cedric Williams did tell you the truth, that Jasmine told the truth, that Ms. Tajuana told you the truth, that Kharletta told you the truth and that there is a core through those individuals—and there’s six of them in total—a core of believability to all of that which is corroborated by Angelo.

The prosecutor’s argument was proper. The prosecutor contended that Stephanie McIver’s testimony was not credible “for obvious reasons”; she was romantically involved with defendant and he lived with her at her residence. Stephanie McIver maintained that defendant was not at home during the day of the incident because he was working at the Detroit Tastefest. She also testified that he had perhaps smoked marijuana before the stabbing. Stephanie McIver’s testimony contradicted that of all the other witnesses who were present at the barbeque.

Moreover, the testimony of the other witnesses who were present was consistent and corroborated Angelo Henry's version of events. The prosecutor was free to argue, based on the evidence presented, that Stephanie McIver was not credible and that the other witnesses were credible. *Howard, supra* at 548. Therefore, the prosecutor's argument did not constitute misconduct.

Finally, defendant argues that his counsel's failure to challenge the alleged instances of prosecutorial misconduct denied him effective assistance of counsel. We disagree. Because the prosecutor's arguments and questions were proper, as discussed above, counsel was not ineffective. "Defense counsel is not required to raise a meritless objection." *People v Kulpinski*, 243 Mich App 8, 27; 620 NW2d 537 (2000).

Affirmed.

/s/ William C. Whitbeck

/s/ Peter D. O'Connell

/s/ Donald S. Owens