

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENYATTA LAJUAN DANIELS,

Defendant-Appellant.

UNPUBLISHED

November 19, 2009

No. 283162

Wayne Circuit Court

LC No. 07-011262-FC

Before: Talbot, P.J., and O’Connell and Davis, JJ.

PER CURIAM.

Defendant was convicted by a jury of carrying a concealed weapon, MCL 750.227, felon in possession of a firearm, MCL 750.224f, and the misdemeanor of entering without owner’s consent, MCL 750.115(1). Defendant appeals as of right. We affirm.

Myeisha Mobley had taken a gun away from Elijah Whitehead, and he came to her home to retrieve it. He was intercepted by Mobley’s stepmother, Grace Williams, who was talking to him on the porch when defendant began approaching. Both Mobley and Williams testified that defendant was holding a gun, but that they did not see Whitehead holding a gun. Williams said defendant forced his way into her vestibule, pointed the gun at her head, demanded the other gun and his “stuff”, and threatened to shoot her, everybody in the house, and her dogs. Williams said that when defendant took a step back onto the porch, she slammed the door. She then heard gunshots. There was a hole in the door and a bullet hole in a wall adjoining a bedroom. A bullet was found in the bedroom and a casing was found in the living room.

Defendant, in essence, testified that Whitehead had entered the home and argued with Mobley. He claimed Whitehead fired the shot. Gun residue was found on defendant, but he claimed he was near Whitehead when the shot was fired.

Defendant avers that the prosecutor engaged in misconduct. However, he made no objections to the challenged comments. Thus, review is precluded unless an objection could not have cured any error or a failure to review the issue would result in a miscarriage of justice. Review is for outcome-determinative, plain error, i.e., the conviction of an actually innocent

defendant¹ or error that seriously affected the fairness, integrity, or public reputation of the judicial proceeding. *People v Unger*, 278 Mich App 210, 234-235; 749 NW2d 272 (2008). Reversal is not required if a curative instruction could have alleviated any prejudicial effect; most inappropriate prosecutorial statements can be cured. *Id.* at 235.

In closing, the prosecutor referred to the evidence that Whitehead fired the shot as the “throwing the kitchen sink” theory. The prosecutor also stated that defense counsel was attempting to “confuse” the real issue, defendant’s guilt or innocence, by raising arguments between Mobley and Whitehead and showing that Williams did not like Whitehead. Defendant asserts that these arguments denigrated defense counsel and shifted the focus from the evidence, diminishing the presumption of innocence.

In *Unger*, *supra* at 236, this Court stated Prosecutors are typically afforded great latitude regarding their arguments and conduct at trial. *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995). They are generally free to argue the evidence and all reasonable inferences from the evidence as it relates to their theory of the case. *Id.* However, “[a] prosecutor may not suggest that defense counsel is intentionally attempting to mislead the jury.” *People v Watson*, 245 Mich App 572, 592; 629 NW2d 411 (2001); see also *People v Dalessandro*, 165 Mich App 569, 580; 419 NW2d 609 (1988).

The prosecutor may not question defense counsel’s veracity. When the prosecutor argues that the defense counsel himself is intentionally trying to mislead the jury, he is in effect stating that defense counsel does not believe his own client. This argument undermines the defendant’s presumption of innocence. Such an argument impermissibly shifts the focus from the evidence itself to the defense counsel’s personality. [*People v Wise*, 134 Mich App 82, 101-102; 351 NW2d 255 (1984) (internal citations omitted).]

This case involved a credibility contest. In referring to the “kitchen sink”, the prosecutor was arguing that defendant’s version of events was not credible. The prosecutor was not denigrating defense counsel, but was characterizing the defense as untrustworthy. This was consistent with vigorous advocacy; it did not constitute prosecutorial misconduct.

We find no misconduct regarding comments that defense counsel was attempting to confuse the real issue, defendant’s guilt or innocence, by bringing up arguments between Mobley and Whitehead and evidence that Williams did not like Whitehead. The prosecutor was arguing that defense counsel was trying to shift the focus away from the determination of defendant’s guilt by focusing on issues pertaining to Whitehead and other individuals. It was within the wide latitude afforded the prosecutor to ask the jury to focus on the main determination at hand.

¹ We note that defendant was acquitted of assault with intent to murder, first-degree home invasion, and felony firearm. However, if there were prosecutorial misconduct, his convictions on the less serious offenses theoretically could have been averted.

Defendant next argues that the prosecutor improperly painted Williams as noble. In recapping what happened, the prosecutor stated that although Williams feared for her life, her motherly instinct” led her to protect her children by telling them to get upstairs. This was a fairly innocuous comment and nothing of consequence was interjected into the proceedings. Any concern posed by this comment could have been cured by an instruction.

Defendant asserts that the prosecutor vouched for Williams’s credibility when he said, “Grace Williams knows what she saw. She saw wood chips fly into that door, that’s the bullet going through. She sees that.” Defendant also points to the prosecutor’s comments suggesting that Williams would have embellished her testimony if she were inclined to lie. The prosecutor also asked the jury to consider whether Williams had a reason to lie, and stated she “had nothing to lose but all to gain by telling you the truth.” Finally, the prosecutor asserted that Williams’s testimony was consistent and stated, “not only do you believe Grace Williams because of the fact that she testified as to the truth but the evidence.” The prosecutor then recapped the residue evidence and noted that her testimony was corroborated by the match of the bullets with the gun.

A prosecutor may not vouch for the credibility of a witness by suggesting that he has some special knowledge that the witness is testifying truthfully. *Bahoda, supra* at 276. “[H]owever, the prosecutor may argue from the facts that a witness should be believed.” *People v McGhee*, 268 Mich App 600, 630; 709 NW2d 595 (2005). The prosecution has wide latitude in arguing the facts and reasonable inferences, and need not confine argument to the blandest possible terms. *People v Aldrich*, 246 Mich App 101, 112; 631 NW2d 67 (2001). Here, the prosecutor did not profess to have any special knowledge regarding the truthfulness of Williams’ testimony. Rather, he was asking the jury to judge her credibility based on consistency, the absence of a motive to lie, and corroborating evidence. This argument was within the bounds of proper argument.

Affirmed.

/s/ Michael J. Talbot
/s/ Peter D. O’Connell
/s/ Alton T. Davis