

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHARRELL ELLIOTT BELL,

Defendant-Appellant.

UNPUBLISHED

February 8, 2011

No. 295933

Wayne Circuit Court

LC No. 06-004255-FH

Before: BORRELLO, P.J., and JANSEN and FORT HOOD, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of felon in possession of a firearm, MCL 750.224f, carrying a concealed weapon (CCW), MCL 750.227, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. He was sentenced as a habitual offender, second offense, MCL 769.11, to two to five years' imprisonment for the felon in possession and CCW convictions, and five years' imprisonment for the felony-firearm conviction. Defendant appeals as of right, and we affirm.

Detroit police officers were on routine patrol when they heard gunshots. They drove in search of the source of the gunfire and came upon defendant, who was walking across a vacant lot. The officers merely wanted to question defendant regarding the location of the gunshots. However, after making eye contact with the officers, defendant fled on foot and grabbed his right coat hip pocket. Near an abandoned vehicle, defendant tossed a handgun out from his coat pocket. The gun hit the side of the vehicle and landed on top of the snow. Defendant ignored requests to stop and entered a home on Moenart Street. A female answered the door, and defendant exited the home. The female asserted defendant and her children were the only other occupants in the home. An officer identified defendant as the man they chased into the home, and defendant was arrested. In the opinion of one officer, defendant attempted to deflect attention from himself by asserting that no one had recently ran into the home. Defendant was convicted as charged.

Defendant first alleges that his constitutional rights to a fair trial were violated when improper opinion testimony regarding defendant's guilt and credibility were admitted at trial. We disagree. The trial court's determination regarding the admission of evidence is reviewed for an abuse of discretion. *People v Smith (On Remand)*, 282 Mich App 191, 194; 772 NW2d 428 (2009). Defendant did not object to the admission of this evidence, and therefore, we review for

plain error affecting defendant's substantial rights. See *People v Thomas*, 260 Mich App 450, 453-454; 678 NW2d 631 (2004).

A witness who is not testifying as an expert may provide opinion or inference testimony if rationally based on a perception of the witness, and it provides a clear understanding of the witness' testimony or is helpful to a determination of a fact in issue. *People v Yost*, 278 Mich App 341, 358; 749 NW2d 753 (2008); MRE 701. Admission of opinion testimony that a defendant was attempting to conceal himself was not an abuse of discretion because it was based on the perception of the witness and addressed the key issue of whether defendant was the victim of a crime or the culprit. *People v Jonathon Smith*, 152 Mich App 756, 764; 394 NW2d 94 (1986).

In the present case, police were in pursuit of a man who fled into the home on Moenart Street. A female occupant who came to the door reported that the only other people in the home were her children and defendant. At that time, defendant interrupted and attempted to divert the officers' attention away from the residence. One officer opined that defendant essentially began to provide fabricated information by stating that no one had recently entered the home.

Based on the facts and circumstances, defendant has failed to demonstrate plain error affecting his substantial rights. *Thomas*, 260 Mich App at 453-454. The officers pursued defendant into the home. One of the officers testified that he was merely twenty to twenty-five feet behind defendant during the pursuit and never lost sight of him. The door to the home was apparently unlocked because defendant was able to immediately enter the residence. The female occupant stated that there was no other adult male in the home besides defendant. One of the officers identified defendant as the subject of their foot pursuit. Based on the evidence, the opinion testimony was premised on the officer's perception of the situation and aided in the identification of the person who discarded the weapon. *Jonathon Smith*, 152 Mich App at 764. This issue does not entitle defendant to appellate relief.

Next, defendant contends that he was deprived of a fair trial based on prosecutorial misconduct when the prosecutor vouched for the credibility of her witnesses. We disagree. There was no objection to the prosecutor's statements, and therefore, this issue is reviewed for plain error. *Thomas*, 260 Mich App at 453-454. A prosecutor may not make factual statements to the jury that are not supported by the evidence, but may argue the evidence and all reasonable inferences arising from the evidence as it relates to the prosecutor's theory of the case. *People v Dobek*, 274 Mich App 58, 66; 732 NW2d 546 (2007). The prosecutor is given wide latitude when arguing the facts and reasonable inferences and need not limit the argument to the blandest possible terms. *Id.* A claim of prosecutorial misconduct based on improper vouching lacks merit when the challenged comments reflect arguments from the facts and testimony that the witnesses at issue were credible or worthy of belief. *Id.*

In the present case, the prosecutor did not imply that she had special knowledge that the officers were testifying truthfully. Rather, she opined that under the facts and circumstances of this case, the officers had no motive to lie. The officers did not have prior contacts with defendant, and there was no evidence that they targeted defendant. This claim of error is not substantiated by the lower court record. *Dobek*, 274 Mich App at 66.

Lastly, defendant asserts that he was deprived of the right to effective assistance of counsel because his attorney failed to object to the improper opinion testimony and prosecutorial misconduct. In light of our rejection of the challenges raised by defendant, this issue does not provide defendant with appellate relief. Trial counsel is not ineffective for failing to raise a meritless objection. *People v Matuszak*, 263 Mich App 42, 60; 687 NW2d 342 (2004).

Affirmed.

/s/ Stephen L. Borrello

/s/ Kathleen Jansen

/s/ Karen M. Fort Hood