

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
February 28, 2012

v

ISIAH JOHNSON,

No. 301319
Wayne Circuit Court
LC No. 10-006348-FH

Defendant-Appellant.

Before: SAAD, P.J., and K. F. KELLY and M. J. KELLY, JJ.

PER CURIAM.

Defendant Isiah Johnson appeals by right his jury conviction of two counts of second-degree criminal sexual conduct. See MCL 750.520c(1)(a). The trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to serve concurrent prison terms of 5 to 15 years for each conviction. Because we conclude that there were no errors warranting relief, we affirm.

This case arises out of allegations that defendant had sexual contact with his ex-girlfriend's 11-year-old daughter. Defendant argues on appeal that the prosecutor improperly vouched for the victim during closing arguments and that this deprived him of a fair trial. To preserve a claim of prosecutorial misconduct, a defendant must either timely object or request a curative instruction. *People v Brown*, 279 Mich App 116, 134; 755 NW2d 664 (2008). In this case, defendant did not object to the prosecutor's statements or make a request for a curative instruction. Therefore this issue is not preserved. This Court reviews unpreserved claims of prosecutorial misconduct for plain error affecting substantial rights. *Id.* Under the plain error rule, a defendant must establish that error occurred, the error was clear and obvious, and that it affected his substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

During closing argument, the prosecutor addressed, among other things, the credibility of the 11-year-old complainant. The prosecutor argued that the complainant was a credible witness because she had no reason to lie:

So [the complainant] has absolutely no motive and no reason to lie. And the judge is going to tell you that when you determine credibility, I believe she'll tell you that one of the things that you look for in credibility instances like this are look for bias, for reason to lie or reason to tell the truth. If anything, by telling the truth about Mr. Johnson, [the complainant's] been adversely impacted. Because she no longer has someone to buy her clothes, buy her toys, give her extra

spending money, all of this is gone now. But she still told the truth about what Mr. Johnson did to her.

A prosecutor may not urge a jury to convict a defendant out of sympathy for the victim. *People v Unger*, 278 Mich App 210, 237; 749 NW2d 272 (2008). A prosecutor also may not imply that he or she has some special knowledge that a witness's testimony is truthful. *People v Dobek*, 274 Mich App 58, 66; 732 NW2d 546 (2007). However, a prosecutor may argue from the facts that a witness is credible. *Id.* In arguing that a witness is worthy or not worthy of belief, a prosecutor may argue the evidence and all reasonable inferences. *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995).

In this case, the prosecutor described how defendant provided financial assistance to the complainant by giving her money, buying her clothes, and paying for her activities. The prosecutor suggested to the jury that it could be inferred that such monetary gain might provide motivation for the complainant to remain silent and not disclose the molestation. However, despite this motivation, the complainant disclosed the molestation, against her own self-interest. The prosecutor did not ask the jury to convict out of sympathy for the victim and did not improperly vouch for the complainant's credibility, but rather properly presented reasons, grounded in the evidence, for why the jury should find the child's testimony credible.

The prosecutor's comments were not improper.

Affirmed.

/s/ Henry William Saad
/s/ Kirsten Frank Kelly
/s/ Michael J. Kelly