

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAWRENCE E. CAIN,

Defendant-Appellant.

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UNPUBLISHED  
October 20, 2000

No. 215827  
Wayne Circuit Court  
LC No. 98-005377

Before: Neff, P.J., and Talbot and J. B. Sullivan,\* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of malicious destruction of property over \$100, MCL 750.377a; MSA 28.609(1). Defendant was sentenced to one year probation. We affirm.

Defendant first contends that the trial court erred in denying defendant's motion for a lineup. "A right to a lineup arises when eyewitness identification has been shown to be a material issue and when there is a reasonable likelihood of mistaken identification that a lineup would tend to resolve." *People v McAllister*, 241 Mich App 466, 471; 616 NW2d 203 (2000). The decision to grant or deny a defendant's motion for a lineup is within the trial court's discretion. *Id.* When deciding a motion for a lineup, the trial court should consider the benefit to the accused, the burden to the prosecution, police, courts, and witnesses, and the timeliness of the motion. See *People v Gwinn*, 111 Mich App 223, 249; 314 NW2d 562, (1981).

An eyewitness, Colleen Osadetz, testified that she was only an arm's length away from defendant when she saw defendant "key" the complainant's vehicle and then enter Signature Flight Support. A manager of Signature Flight Support, who was notified of the keying incident shortly after it occurred, testified that defendant was the only person in the building lobby matching the description of the perpetrator. Thus, although eyewitness identification was a material issue, a lineup would not have resolved any "mistaken identification." See *McAllister, supra*. Further, the court considered the untimeliness of defendant's motion and was aware of

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\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

the possible hardship a delay for a lineup could have had on Osadetz, who is an Ohio resident. See *Gwinn, supra*. We find no abuse of discretion in the denial of defendant's motion for a lineup.

Defendant next argues that he was denied his right to a fair trial by the prosecutor's improper comments during closing argument. We disagree. Because defendant failed to object to the comments at trial, appellate review is precluded unless a curative instruction could not have eliminated possible prejudice or failure to consider the issue would result in a miscarriage of justice. *People v Noble*, 238 Mich App 647, 660; 608 NW2d 123 (1999).

Issues of prosecutorial misconduct are decided on a case-by-case basis, and the reviewing court must evaluate the prosecutor's remarks in context. *People v Schutte*, 240 Mich App 713, 721; 613 NW2d 370 (2000). The prosecutor need not state his argument in the blindest possible terms. *Id.* at 722.

In the instant case, the prosecutor told the jury that defendant was lying to avoid responsibility and to protect himself. Further, the prosecutor told the jury that Osadetz's testimony was more credible than defendant's testimony. However, reading the prosecutor's comments in context shows that the prosecutor's comments were based on his view of the evidence, i.e., that the facts did not support portions of defendant's testimony. The prosecutor fairly commented that defendant's interest in self-preservation was a reason to lie. See *People v Marji*, 180 Mich App 525, 541; 447 NW2d 835, (1989). Further, although a prosecutor may not vouch for the credibility of a witness, a prosecutor may argue from the facts that a witness, including the defendant, is not worthy of belief. *People v Bahoda*, 448 Mich 261, 276; 531 NW2d 659 (1995); *People v Launsburry*, 217 Mich App 358, 361; 551 NW2d 460 (1996). A contextual review of the prosecutor's remarks shows that the prosecutor did not convey a message to the jury that he had some special knowledge or facts indicating the truthfulness of Osadetz or the untruthfulness of defendant. *Schutte, supra* at 722.

Even if the prosecutor's comments were improper, they were of an isolated nature, and any error could have been rectified with a curative instruction. *People v Green*, 228 Mich App 684, 693; 580 NW2d 444, (1998). In this case, any unfair prejudice would also have been cured by the trial court's careful and explicit instructions that the jury was required to decide the case on the evidence alone, that it was to determine the credibility of the witnesses and which witnesses to believe, and that the lawyers' statements were not evidence. See *Id.* Therefore, the comments do not warrant reversal.

Affirmed.

/s/ Janet T. Neff  
/s/ Michael J. Talbot  
/s/ Joseph B. Sullivan