

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARRYL SPENCER LYONS,

Defendant-Appellant.

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UNPUBLISHED

February 2, 2010

No. 288583

Kent Circuit Court

LC No. 07-001488-FC

Before: Beckering, P.J., and Markey and Borrello, JJ.

MEMORANDUM.

Defendant appeals by right his conviction after jury trial of assault with intent to rob while armed, MCL 750.89. Defendant was sentenced as a fourth habitual offender, MCL 769.12, to 20 to 40 years in prison. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant was accused of pointing a gun at Douglas Barnhart and then going through Barnhart's pockets. Barnhart said defendant then walked off and entered an apartment building. One set of fresh tracks in the snow lead to the rear common door of the apartment building. Barnhart had indicated that the suspect was deaf. A tenant of the apartment building identified defendant as a deaf person who lived there. She directed police to defendant's apartment. Further, she reported that she had seen defendant with a gun earlier that day. Defendant was arrested, but no gun was found. Defendant immediately denied that he was involved in the robbery, denied having a gun, and maintained his innocence throughout the trial. He told officers that witnesses who said he had a gun were lying.

Defendant denied pulling a gun on Barnhart, denied ever owning a gun, and denied that he had shown the tenant a gun. Further, he claimed that Barnhart and the tenant had smoked crack cocaine with him that evening. On cross-examination, defendant responded affirmatively when asked if Barnhart and the tenant were "crack users and liars."

Defendant argues that the prosecutor infringed on his constitutional rights by impermissibly questioning him about his assessment of Barnhart's and the tenant's credibility.

Based on *People v Buckey*, 424 Mich 1, 17; 378 NW2d 432 (1985), we conclude that the questioning was improper. But, in *People v Blackmon*, 280 Mich App 253, 260; 761 NW2d 172 (2008), this Court expressly found that a prosecutor's alleged improper questioning of a

defendant about the credibility of witnesses related to an evidentiary matter and that such evidentiary errors were nonconstitutional. Defendant did not object to the questioning. Accordingly, our review is limited to plain error affecting substantial rights, meaning that the alleged error must have affected the outcome of the proceeding. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

The defense was premised on defendant's assertion that he did not rob Barnhart, did not have a gun, and did not know why Barnhart and the tenant would say he did. The defense hinged on the jury's believing defendant instead of these witnesses. Defendant had consistently maintained that Barnhart and the tenant were lying. Since the crux of the defense was that Barnhart and the tenant were lying, and it had previously come out at trial that defendant had consistently maintained that they were lying, we can discern no prejudice emanating from a request that he give an opinion on their credibility.

We affirm.

/s/ Jane M. Beckering

/s/ Jane E. Markey

/s/ Stephen L. Borrello