

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
April 24, 2014

v

ANDREW RAMON SCOTT,
Defendant-Appellant.

No. 311955
Kent Circuit Court
LC No. 11-009938-FC

Before: HOEKSTRA, P.J., and MARKEY and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant appeals by right his convictions for first-degree murder, MCL 750.316, and possession of a firearm during the commission of a felony, MCL 750.227b. We affirm.

Clarissa Vaughn was at a house in Grand Rapids when two women attacked her. Tahari Briggs was parked outside the house in a van. Defendant pulled an attacker off Vaughn, and Briggs shouted at defendant. The next morning, defendant and his friend, Louie Howard, drove to meet another friend, and while driving, they saw Briggs also out driving. Once they spotted Briggs, they placed their guns in their laps. Defendant then changed his route to cut off Briggs. Defendant pulled up next to Briggs after Briggs swerved into their lane. Howard testified that Briggs was crouching, and defendant testified that Briggs was in a reaching position. Defendant shot Briggs, claiming that he thought Briggs was going to shoot him.

Defendant argues several instances of prosecutorial misconduct. These claims were not preserved with contemporaneous objections, so our review is limited to plain error affecting substantial rights. *People v Unger*, 278 Mich App 210, 234-235; 749 NW2d 272 (2008).

Defendant first argues that the prosecution improperly bolstered a witness' credibility by stating, "[h]e does not commit perjury." A prosecutor may argue from admitted evidence all reasonable inferences, including that the facts show a witness should be believed. *People v Seals*, 285 Mich App 1, 22; 776 NW2d 314 (2009). Here, the prosecutor described the witness' interactions with the police, and the statement appeared to compare the witness' testimony with that of Howard, a key prosecution witness who was charged with perjury for lying about the case. Thus, the statement "can be viewed as summarizing certain evidence at trial while downplaying a potential weakness in the prosecution's case," *id.* at 24, and it was a reasonable inference drawn from the evidence. There was no plain error.

Defendant further argues that the prosecutor's statement that the police "did their job" improperly bolstered the credibility of the police. "A prosecutor may not vouch for the credibility of his witnesses by suggesting that he has some special knowledge of the witnesses' truthfulness." *Id.* at 22. But a prosecutor "is free to argue the evidence and any reasonable inferences that may arise from the evidence." *People v Ackerman*, 257 Mich App 434, 450; 669 NW2d 818 (2003). Here, the prosecutor commented on the police investigation and presented witnesses on its length and complications. Thus, because the challenged statement was based on the evidence and reasonable inferences, it was properly admitted. *Id.* There was no plain error.

Defendant next argues that the prosecution improperly bolstered the credibility of the police when it said "[w]e can't find them. We have no idea where they're at at that time, or while we were getting some help from friends, family, associates, nobody's telling us where they're at." (Emphasis added). The record does not show "an attempt to place the credibility of [her] office behind the case or a suggestion that [she] possessed extrajudicial information on which defendant should be convicted." *People v Reed*, 449 Mich 375, 399; 535 NW2d 496 (1995). While the prosecutor aligned herself with the police by using "we" and "us" in telling the story of the police investigation, she did not imply special knowledge or extrajudicial information as the reason the witnesses should be believed. *Id.*; *Seals*, 285 Mich App at 22. There was no plain error. Moreover, the trial court's instructions that attorneys' statements are not evidence would have alleviated any prejudice from the prosecutor's comments. *Unger*, 278 Mich App at 237.

Defendant further argues that reference to justice being overdue was improper. "A prosecutor may not appeal to the jury to sympathize with the victim." *Id.* But asking the jury to decide the case fairly on the basis of the evidence is not an appeal to sympathy. *People v Howard*, 226 Mich App 528, 546-547; 575 NW2d 16 (1997). Here, after the prosecution stated the "victim's family is left without justice," it stated, "[w]e do not come to you and would not come to you unless the evidence would prove" After the prosecution stated "[j]ustice is way overdue," it stated defendant should be found guilty "[b]ased on the evidence and the law." Thus, the comments were "made in the context of asking the jury to decide the case fairly on the basis of the evidence." *Id.* There was no plain error.

Defendant next argues that it was improper for the prosecution to state, "[w]e do not come to you and would not come to you unless the evidence would prove beyond a reasonable doubt, that 'Mon with his buddy . . . killed Tahari Briggs without any lawful justification.'" Although the prosecution "may not express a belief in the defendant's guilt without relating the belief to the evidence," *People v Humphreys*, 24 Mich App 411, 414; 180 NW2d 328 (1970), the remarks here were in reference to the evidence and were proper. There was no plain error.

Defendant further argues that it was improper for the prosecution to state, "[i]f this detective believed this is self-defense, we would not be sitting here right now." Otherwise improper statements are proper if they are properly responsive to issues raised by the defense. *People v Dobek*, 274 Mich App 58, 64; 732 NW2d 546 (2007). When arguing he acted in self-defense, defendant suggested that the detective also believed the shooting was self-defense. Consequently, the prosecution's statement regarding the detective's opinion properly responded to defendant's theory of the case. We find no plain error.

Defendant additionally argues that the prosecution improperly described the killing as

“murder” and improperly referred to the gun as a “murder weapon.” “[T]he prosecution is not required to state inferences and conclusions in the blandest possible terms.” *Unger*, 278 Mich App at 239. The prosecution’s use of “murder” and “murder weapon” was proper because it was consistent with the evidence and the prosecution’s theory of the case that defendant shot Briggs twice after attempting to confront him about attacking Vaughn. See *People v Long*, 246 Mich App 582, 587; 633 NW2d 843 (2001). There was no plain error.

In a related claim, defendant argues that the cumulative effect of the errors alleged denied him a fair trial. Because none of the alleged errors constituted misconduct, no cumulative effect of errors existed. *Dobek*, 274 Mich App at 106. Defendant finally argues that trial counsel was ineffective for failing to object to any of the prosecutor’s statements. Because the statements did not constitute misconduct, defense counsel was not ineffective. *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010).

We affirm.

/s/ Joel P. Hoekstra

/s/ Jane E. Markey