

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHERUNDA L. FOX,

Defendant-Appellant.

UNPUBLISHED

December 18, 2001

No. 229327

Wayne Circuit Court

LC No. 99-008909

Before: K.F. Kelly, P.J., and Hood and Doctoroff, JJ.

MEMORANDUM.

Defendant was convicted, following a jury trial, of two counts of felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b. She was sentenced to concurrent terms of two to four years' imprisonment for the felonious assault convictions to be served consecutively to two years' imprisonment for the felony-firearm conviction. Defendant appeals as of right, and we affirm.

Defendant was accused of threatening her next door neighbor with a gun following a rapidly escalating argument, and firing a shot into her ceiling doorway.

Defendant first argues that the prosecutor's comments during closing arguments deprived her of a fair trial. We disagree. We review the pertinent portions of the record in context on a case by case basis when examining a claim of prosecutorial misconduct. *People v Schutte*, 240 Mich App 713, 721; 613 NW2d 370 (2000). Prosecutors are free to argue the evidence and all reasonable inferences relating from the theory of the case. *Id.* Additionally, the prosecutor's remarks must be examined in light of the arguments and theories raised by the defense. *Id.* Review of the record reveals that the prosecutor's closing and rebuttal arguments responded to the alternate theories raised by the defense, the credibility of defendant's child, and the attack upon the actions and credibility of the responding police officers. Furthermore, the trial court instructed the jury that arguments of the attorneys were not evidence. Accordingly, this issue is without merit.¹

¹ We note that not all of the alleged improper remarks were properly preserved for appellate review. Nonetheless, we examined all of the alleged improper remarks. Defendant's related argument that trial counsel was ineffective for failing to object to all improper remarks is without merit.

(continued...)

Defendant next argues that trial counsel was ineffective for disclosing the penalty for a felony-firearm conviction to the jury. We disagree. Defendant has failed to overcome the presumption that counsel's actions were trial strategy. *People v Knapp*, 244 Mich App 361, 385-386; 624 NW2d 227 (2001). Furthermore, defendant may not harbor error as an appellate parachute. *People v Fetterley*, 229 Mich App 511, 520; 583 NW2d 199 (1998).

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Harold Hood

/s/ Martin M. Doctoroff

(...continued)

merit.