

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAYMOND DAUJAN CLARK,

Defendant-Appellant.

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UNPUBLISHED  
December 6, 2005

No. 257106  
Kalamazoo Circuit Court  
LC No. 04-000282-FC

Before: Bandstra, P.J., and Neff and Markey, JJ.

MEMORANDUM.

Defendant appeals as of right from his jury convictions of first-degree murder, MCL 750.316, and possession of a firearm during the commission of a felony, MCL 750.227b, for his participation in an attempted armed robbery and the resulting death of Aarin Fultz. We affirm.

Defendant asserts that he was denied a fair trial and received ineffective assistance of counsel when his trial counsel failed to object to Detective Charles Porn's testimony that he told defendant, "That's not going to work," after defendant recanted his several varying statements to police regarding the shooting by stating, "I lied about everything." Defendant argues that Porn's statement was an inadmissible comment on defendant's credibility and guilt pursuant to *People v Buckey*, 424 Mich 1, 17; 378 NW2d 432 (1985).<sup>1</sup> We disagree.

Defendant has misconstrued the detective's testimony. In the process of relating what happened during the course of several interviews with defendant, Porn testified as to defendant's varying statements to police that began with a denial of any participation or knowledge of Fultz' murder, moved to an admission of being in the area with another he identified as the shooter, moved further still to include another participant, and ended with defendant's statement, "I lied about everything," once Porn told defendant that police knew he was involved. Porn testified that his response to defendant's statement was, "That's not going to work."

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<sup>1</sup> There is no claim in this case that there was prosecutorial misconduct which was, in part, an issue in *Buckey*.

Porn's statement was not an impermissible comment at trial concerning defendant's guilt, but part of his overall testimony regarding what had happened during defendant's interviews with police and his response to defendant's multiple stories and sudden recantation. Porn was not, as defendant argues, telling the jurors that they should reject defendant's change of story, rather, he was testifying as to what he told defendant during his interview with him. This was not an impermissible comment regarding defendant's guilt. An attorney is not ineffective for failing to object to admissible evidence. *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000).

There was considerable evidence of defendant's guilt and even if the single sentence complained of was improper, defendant cannot show a reasonable probability that the outcome of his trial would have been different without this brief reference. *People v Toma*, 462 Mich 281, 302-303; 613 NW2d 694 (2000).

Affirmed.

/s/ Richard A. Bandstra

/s/ Janet T. Neff

/s/ Jane E. Markey