

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CAMMIE CALVIN RUCKER,

Defendant-Appellant.

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UNPUBLISHED

September 25, 2007

No. 271176

Wayne Circuit Court

LC No. 06-002354-01

Before: Schuette, P.J., and Hoekstra and Meter, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of felon in possession of a firearm, MCL 750.224f, and sentenced as an habitual offender, fourth offense, MCL 769.12, to two years' probation with the first ten months to be served in jail.<sup>1</sup> He appeals as of right. We affirm.

**I. FACTS**

Defendant lived with his girlfriend, Angela Smith, and Smith's two children, 17-year-old Angel Smith and 15-year-old Juan Smith. Maresse Thomas is Angel's boyfriend. Thomas and Demetrious Brooks are close friends and share an apartment. At one point, Brooks lived with Smith and defendant for about one month. Both Brooks and Thomas testified that they have very close relationships with both defendant and Smith.

Brooks and Thomas testified that, on February 10, 2006, Angel and Juan were at their apartment because Angel did not want to be at home. Throughout the day, defendant and Smith wanted the children to return home, and defendant came to the apartment about three times attempting to retrieve the children. At about 2:30 p.m., defendant and Smith returned, and defendant stood outside the building yelling. Brooks allegedly told the children that Smith and defendant were there, but the children did not go outside. Thomas indicated that defendant repeatedly demanded that he come outside. Brooks acknowledged that, at the preliminary examination, he testified that defendant yelled, "Bitches come on outside, bitches, mother

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<sup>1</sup> Defendant was acquitted of additional charges of felonious assault, MCL 750.82, carrying a concealed weapon, MCL 750.227, and possession of a firearm during the commission of a felony, MCL 750.227b.

f\*\*kers, I should shoot you in that mother f\*\*ker, but no I want to shoot through ya'll." Brooks testified that he saw defendant put "something" in his pocket. Brooks acknowledged that, at the preliminary examination, he testified that he saw defendant put a "gun back in his pocket." Thomas also testified that defendant had a gun after initially claiming that he did not remember what had occurred.

Police testimony revealed that several calls were received reporting a woman attempting to retrieve her two children and "a man threatening people with a gun." When the police arrived, defendant was sitting in the driver's side of his blue mini van. As a result of information received from Thomas and Brooks, the police searched defendant and his van and found a loaded nickel-plated revolver in the glove box. Defendant, whom an officer indicated had been drinking alcohol, was arrested.

Following the preliminary examination, Brooks wrote a note indicating that the police "made [him] testify," and that he "said what [he] said because [he] was angry." Both Brooks and Thomas signed the note. At trial, Brooks testified that the note was not true, and explained that he wrote the note because defendant asked him to do so and he wanted to help defendant.

The defense argued that defendant did not possess a weapon. The defense claimed that Thomas put the gun in the glove box when he borrowed defendant's van, and noted that Thomas was "able to describe how the gun looks." On cross-examination, Thomas acknowledged that he had borrowed defendant's van a few days before this incident. The defense also presented police testimony that both Thomas and Brooks provided a description of the weapon, i.e., a nickel-plated revolver.

## II. MRE 404(b) EVIDENCE

Defendant argues that he was denied a fair trial when the prosecutor was twice allowed to introduce evidence that was inadmissible under MRE 404(b). We disagree.

### A. Standard of Review

In order to timely object to a prosecutor's question, an objection should be made between the question and the answer. *People v Jones*, 468 Mich 345, 355; 662 NW2d 376 (2003). An objection on one ground is insufficient to preserve an appellate challenge based on a different ground. *People v Bulmer*, 256 Mich App 33, 35; 662 NW2d 117 (2003). Defendant failed to object on the ground now argued; therefore, this issue is unpreserved and our review is limited to plain error affecting defendant's substantial rights. *People v Kimble*, 470 Mich 305, 312; 684 NW2d 669 (2004).

### B. Analysis

During the prosecutor's redirect examination of Thomas, the following exchange occurred:

Q. Do you know why Angel and Juan were at your house?

A. Yes.

\* \* \*

*Q. Because [defendant] and [Smith] got into an argument and they - -?*

[*Defense counsel*]: Objection, Judge, it's hearsay.

[*The trial court*]: Sustained.

[*Prosecutor*]: I have no further questions. [Emphasis added.]

Defendant correctly notes that a prosecutor may not indiscriminately introduce prior bad acts of a defendant. See MRE 404(b)(1).<sup>2</sup> However, we conclude that the above testimony is not improper bad-acts evidence under MRE 404(b). The most that the jury could infer from this testimony was that defendant argued with his girlfriend, which is not necessarily a "bad act." But even if the challenged question was improper, it does not warrant reversal. Immediately following the question, defense counsel objected. Although the objection was on hearsay grounds, the trial court sustained it, and Thomas did not provide a response. Defendant did not request any further action by the trial court, and the prosecutor did not discuss the matter further. In its final instructions, the court instructed the jury that the lawyers' questions are not evidence, to decide the case based only on the properly admitted evidence, and to follow the court's instructions. "Jurors are presumed to follow their instructions, and instructions are presumed to cure most errors." *People v Abraham*, 256 Mich App 265, 279; 662 NW2d 836 (2003).

Similarly, defendant argues that during the prosecutor's direct examination of Brooks, the prosecutor improperly alleged that defendant had abused or pointed a knife at Smith:

*Q. Did you ever live with them?*

A. About a month.

*Q. And during that time that you lived with them, did you witness any physical abuse by [defendant] on Miss Smith?*

A. No.

*Q. Have you ever witnessed any physical abuse by [defendant] on Miss Smith?*

A. No, I never seen him put his hands on [her].

*Q. Did you see him point a knife at her?*

[*Defense counsel*]: Judge, can I ask what the relevance is?

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<sup>2</sup> MRE 404(b)(1) prohibits "[e]vidence of other crimes, wrongs, or acts" to prove a defendant's character or propensity to commit the charged crime. *People v Knox*, 469 Mich 502, 509; 674 NW2d 366 (2004).

[*The trial court*]: Counsel?

[*Prosecutor*]: Judge, I think the relevance is to show the relationship of these people. First of all, why he is unwilling to testify, why the children went over there, and why [defendant] went over to this location. I don't know how it's not relevant.

[*The trial court*]: He answered the question to some point. Continuous specifics are not admissible. You can ask him the general question and he can answer it, and he has to answer it.

*Q. Did you see [defendant], prior to this occasion[,] point a knife at Angela Smith?*

*A. No, I did not see that.*

*Q. You didn't see it?*

*A. No. [Emphasis added.]*

Again, defendant has failed to demonstrate that the prosecutor's questions constituted plain error affecting his substantial rights. Defendant argues that the prosecutor's "allegations" regarding defendant abusing Smith constituted introduction of improper MRE 404(b) evidence. However, Brooks denied witnessing defendant abuse or point a knife at Smith. Consequently, although defendant argues that "allegations" were made, there was no direct or circumstantial evidence that defendant abused or pointed a knife at Smith. In other words, there was no evidence before the jury that defendant committed a "bad act" for purposes of MRE 404(b). Moreover, as previously indicated, the trial court instructed the jury that the lawyers' questions are not evidence, and the jury is presumed to follow those instructions. *Abraham, supra*. Consequently, this claim does not warrant reversal.<sup>3</sup>

### III. PROSECUTORIAL MISCONDUCT

Defendant further argues that the prosecutor's conduct during closing argument denied him a fair trial. We disagree.

#### A. Standard of Review

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<sup>3</sup> We note that defendant also argues that he is entitled to a new trial because the prosecution failed to give notice that it intended to introduce bad-acts evidence subject to MRE 404(b) at trial. See *People v Hawkins*, 245 Mich App 439, 453; 628 NW2d 105 (2001) (explaining that, under MRE 404(b)(2), the prosecution is required to provide defendant with reasonable notice of its intent to present evidence of prior bad acts). However, because we have concluded that the challenged testimony was not improper MRE 404(b) evidence, defendant's notice argument is meritless.

Defendant failed to object to the prosecutor's remarks; therefore, we review this claim for plain error affecting substantial rights. *Kimble, supra* at 312. "No error requiring reversal will be found if the prejudicial effect of the prosecutor's comments could have been cured by a timely instruction." *People v Schutte*, 240 Mich App 713, 721; 613 NW2d 370 (2000), abrogated in part on other grounds in *Crawford v Washington*, 541 US 36; 124 S Ct 1354; 158 L Ed 2d 177 (2004).

## B. Analysis

Defendant contends that the prosecutor impermissibly vouched for Thomas and Brooks when she remarked, "They testified because they came in here and they had to come in here and testify and tell the truth." A prosecutor may not vouch for the credibility of a witness by conveying that she has some special knowledge that the witness is testifying truthfully. *People v Knapp*, 244 Mich App 361, 382; 624 NW2d 227 (2001). Here, viewed in context, the challenged remark did not suggest that the prosecutor had special knowledge that Thomas and Brooks were credible. Through a partial recitation of the record, defendant has mischaracterized the prosecutor's argument. In *rebuttal* argument, the prosecutor made the challenged remark in the following context:

The boys, they said they had a relationship with the defendant. The one, Demetrios Brooks testified the defendant was like a stepfather to him. And Maresse Thomas has known the defendant as long.

\* \* \*

And they did not come in here to testify because they wanted to help the defendant. *They testified because they came in here and they had to come in here and testify and tell the truth.* But you heard them on the stand.

Demetrios Brooks said: I don't want any part of this. The man is like a stepfather to me. So why would they lie and say he had a gun, and then be corroborated by the fact that Sergeant John Fisette saw the defendant in that Astro van, that date? It doesn't matter who's [sic] weapon this was. The defendant had it, and the defendant had possession of a weapon.

\* \* \*

So I'm just asking you to listen to the testimony and based on the testimony . . . . [Emphasis added.]

The prosecutor's comments must be considered in light of defense counsel's comments. *People v Messenger*, 221 Mich App 171, 181; 561 NW2d 463 (1997). The prosecutor's argument was focused on refuting defense counsel's assertions during closing argument that Thomas and Brooks were not credible, that their testimony was inconsistent, and that they contrived the story to get defendant "out of their hair." In making the challenged remark, the prosecutor urged the jury to evaluate the evidence, discussed the consistency of their testimony with the fact that a handgun was found in defendant's van, and argued that there were reasons to conclude that Thomas and Brooks were credible. Furthermore, during trial, both Brooks and

Thomas testified that they each had a very close relationship with defendant, and Brooks indicated that he did not want to be in court to testify. A prosecutor is free to argue from the facts that a witness is credible. *People v Howard*, 226 Mich App 528, 548; 575 NW2d 16 (1997). Additionally, in its final instructions, the trial court instructed the jurors that they were the sole judges of the witnesses' credibility, and that the lawyers' comments are not evidence. The instructions were sufficient to dispel any possible prejudice. *People v Long*, 246 Mich App 582, 588; 633 NW2d 843 (2001).

Defendant also contends that in the following emphasized comments made during rebuttal argument, the prosecutor impermissibly argued facts not in evidence:

The boys, they said they had a relationship with the defendant. The one, Demetrious Brooks testified the defendant was like a stepfather to him. And Maresse Thomas has known the defendant as long.

*So if they know anything about guns, they learned it from the defendant. They also testified that it was the defendant who told Demetrious Brooks to come here and lie under oath. Is that the right thing? I haven't seen the defendant do the right thing yet.*

Defense counsel argues that Demetrious Brooks was arrested with a gun. *Where did he learn that? He certainly learned that from the defendant Mr. Rucker.*

A prosecutor may not make a statement of fact to the jury that is unsupported by the evidence. *People v Stanaway*, 446 Mich 643, 686; 521 NW2d 557 (1994). Here, because there was no evidence to support an inference that Thomas or Brooks learned about guns from defendant or that defendant instructed them to lie under oath at trial, the remarks were improper. But viewed in the context of the complete closing and rebuttal arguments, the prosecutor's remarks did not affect defendant's substantial rights. *Kimble, supra* at 312. The remarks involved only a brief portion of the prosecutor's arguments and were not so inflammatory that defendant was prejudiced. See *People v Mayhew*, 236 Mich App 112, 122-123; 600 NW2d 370 (1999). Moreover, any prejudice that may have resulted could have been cured by a timely instruction. *Schutte, supra* at 721. Indeed, the trial court's instructions that the lawyers' comments are not evidence, and that the case should be decided on the basis of the evidence were sufficient to dispel any possible prejudice. *Long, supra*. Consequently, this claim does not warrant reversal.

#### IV. EFFECTIVE ASSISTANCE OF COUNSEL

We also reject defendant's related argument that he was denied the effective assistance of counsel because defense counsel failed to object to the prosecutor's remarks. The trial court's instructions adequately protected defendant's rights; therefore, defendant cannot demonstrate a reasonable probability that, but for counsel's failure to object, the result of the proceeding would

have been different. *People v Effinger*, 212 Mich App 67, 69; 536 NW2d 809 (1995).

Affirmed.

/s/ Bill Schuette  
/s/ Joel P. Hoekstra  
/s/ Patrick M. Meter