

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY RICARDO BELL,

Defendant-Appellant.

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UNPUBLISHED

May 18, 2010

No. 290424

Wayne Circuit Court

LC No. 08-011157-FC

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAMAR EUGENE MYLES-GOUGH,

Defendant-Appellant.

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No. 290532

Wayne Circuit Court

LC No. 08-011157-FC

Before: MURPHY, C.J., and K. F. KELLY and STEPHENS, JJ.

PER CURIAM.

Following a joint jury trial, defendants Anthony Bell and Lamar Myles-Gough were both convicted of first-degree criminal sexual conduct, MCL 750.520b. Defendant Bell was sentenced to a prison term of 51 months to 8-1/2 years, and defendant Myles-Gough was sentenced to a prison term of 6 to 20 years. Both defendants appeal as of right. We affirm.<sup>1</sup>

I. DOCKET NO. 290424

Defendant Bell argues the prosecutor's conduct during closing rebuttal argument denied him a fair trial. Specifically, he contends that that a new trial is required because the prosecutor improperly argued that defense counsel had unfairly attempted to blame the victim for the sexual

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<sup>1</sup> These appeals have been decided without oral argument pursuant to MCR 7.214(E).

assault. We disagree. Because defendant did not object to the challenged remarks, this issue is not preserved. Therefore, we review the issue for plain error affecting defendant Bell's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999); *People v Unger*, 278 Mich App 210, 235; 749 NW2d 272 (2008).

A prosecutor's remarks must be read as a whole and evaluated in light of defense arguments and the relationship they bear to the evidence admitted at trial. See *People v Jansson*, 116 Mich App 674, 693; 323 NW2d 508 (1982). Further, a prosecutor is free to comment on the validity of the defense's theory, *People v Fields*, 450 Mich 94, 115; 538 NW2d 356 (1995), and to argue from the evidence and all the reasonable inferences arising from it as it relates to their theory of the case, *People v Gonzalez*, 178 Mich App 526, 535; 444 NW2d 228 (1989). Further, a prosecutor is "not required to state inferences and conclusions in the blandest possible terms." *People v Launsburry*, 217 Mich App 358, 361; 551 NW2d 460 (1996).

Here, defense counsel argued during closing argument that the victim had had too much to drink and had wanted to engage in a sexual encounter with defendants. In other words, the defense's theory of the case was that the victim was lying and that the encounter had happened because she put herself in the situation. In rebuttal argument, the prosecutor stated that it made her "sick to listen" to the defense attorney "blame the victim" for the encounter.

We cannot conclude that the purported "accusatory" tone of the prosecutor's remarks was improper. Contrary to defendant Bell's argument, the challenged remarks were not the equivalent of questioning defense counsel's veracity or asserting that the defense was trying to mislead or confuse the jury. See *Unger*, 278 Mich App at 236-238. Rather, the prosecutor's comment was a fair response to the defense attorney's closing argument. Moreover, any prejudicial effect was cured by the trial court's instruction to the jury that the attorneys' statements and arguments were not evidence. Juries are presumed to abide by the instructions provided. *People v Mette*, 243 Mich App 318, 330-331; 621 NW2d 713 (2000). Defendant Bell has failed to show a plain error that affected his substantial rights.

## II. DOCKET NO. 290532

Defendant Myles-Gough argues that improper hearsay testimony by Officer Hughes requires reversal. We disagree. Because defendant Myles-Gough did not object to the challenged testimony at trial, we also review this issue for plain error affecting substantial rights. *Carines*, 460 Mich at 763.

Here, most of the challenged testimony was not hearsay because it was not offered for its truth, MRE 801(c), but rather offered to explain how the police located the house where the defendants were arrested and how they identified defendants. Further, to the extent that some of the testimony could be considered hearsay, the record discloses that the victim's statements were made approximately 20 minutes after the charged sexual assault and that the victim appeared distraught. Thus, it is not clear or obvious that the testimony would not have qualified for admission under the excited utterance exception to the hearsay rule, MRE 803(2). Accordingly, the testimony's admission cannot be considered plain error. *Carines*, 460 Mich at 763. In addition, because Officer Hughes's testimony was cumulative of the victim's own testimony, it did not affect defendant Myles-Gough's substantial rights. Therefore, appellate relief is not warranted.

We also reject defendant Myles-Gough's related contention that trial counsel was ineffective for failing to object to this same testimony. Because defendant Myles-Gough did not raise this issue in a motion for a new trial or request for an evidentiary hearing pursuant to *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973), this Court's review is limited to errors apparent on the record. *People v Williams*, 223 Mich App 409, 414; 566 NW2d 649 (1997). "[T]o establish ineffective assistance of counsel, a defendant must show that (1) counsel's performance fell below an objective standard of reasonableness under professional norms and (2) there is a reasonable probability that, but for counsel's errors, the result would have been different and the result that did occur was fundamentally unfair or unreliable." *People v Seals*, 285 Mich App 1, 18; 776 NW2d 314 (2009).

Because defendant Myles-Gough has not established that the challenged testimony was improper, he has not established that defense counsel's failure to object fell below an objective standard of reasonableness. See *People v Knapp*, 244 Mich App 361, 386; 624 NW2d 227 (2001) (counsel not required to make frivolous objection). Nor has defendant Myles-Gough's shown that he was prejudiced by counsel's failure to object to the testimony. As noted, the officer's testimony was largely cumulative of the victim's testimony and thus it cannot be said that the outcome of trial would have been different if the testimony had not been admitted. Accordingly, defendant Myles-Gough has failed to demonstrate that he was denied effective assistance of counsel.

Affirmed.

/s/ William B. Murphy  
/s/ Kirsten Frank Kelly  
/s/ Cynthia Diane Stephens