

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALISA SMITH,

Defendant-Appellant.

UNPUBLISHED
February 26, 2002

No. 225996
Wayne Circuit Court
LC No. 99-005925

Before: White, P.J., and Whitbeck, C.J., and Holbrook, Jr., J.

PER CURIAM.

Defendant appeals as of right from her jury trial conviction for felonious assault, MCL 750.82. Defendant was sentenced to twelve months' probation. We affirm.

Defendant first argues that the prosecutor committed misconduct at trial because he referred to the weapon used in this case as a "board" rather than a "stick." We disagree. Because this issue was not properly preserved at trial, we review the alleged error under the plain error rule. *People v Schultz*, 246 Mich App 695, 709; 635 NW2d 491 (2001). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain . . . , 3) and the plain error affected substantial rights. The third requirement generally requires a showing of prejudice" *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Further, if the three elements of the plain error rule are established, "[r]eversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error "seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings" independent of the defendant's innocence.'" *Id.*, quoting *United States v Olano*, 507 US 725, 736-737; 113 S Ct 1770; 123 L Ed 2d 508 (1993), quoting *United States v Atkinson*, 297 US 157, 160; 56 S Ct 391; 80 L Ed 555 (1936).

During closing arguments at trial, the prosecutor frequently referred to the weapon used in this case as a "board," while the witnesses referred to the weapon as a "stick." However, the witnesses described the "stick" as a hard, wooden, flat stick such as "a stick that you put up under a bed to balance the bed on," or "the slats that you put under there to put the box spring on the bed," and as a stick that is approximately two to three inches in width and approximately four feet in length. While the prosecutor may not argue facts not in evidence or mischaracterize the evidence presented, the prosecutor may argue reasonable inferences from the evidence. *People v Watson*, 245 Mich App 572, 588; 629 NW2d 411 (2001). We believe that referring to the instrument as a board is a reasonable characterization given the descriptions of it offered by the

witnesses. Further, the trial judge instructed the jury that the attorneys' comments made during closing arguments were not evidence. Accordingly, we conclude that defendant has failed to demonstrate plain error.

Second, defendant argues that the trial court improperly shifted the burden of proof for the claimed defense of self-defense from the prosecutor to defendant. Defendant does not argue that the jury instructions misstated the law or that they were inaccurate in any way. Instead, defendant argues that the length of the instruction for the elements of self-defense, followed by the brevity of the instruction for the burden of proof on the element of self-defense, was improper because it shifted the burden of proof to defendant. We disagree.

The trial judge properly instructed the jury that the burden of proof was on the prosecution to disprove self-defense beyond a reasonable doubt. *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996); *People v Fortson*, 202 Mich App 13, 20; 507 NW2d 763 (1993). Even if the jury instructions were somewhat imperfect, there is no error if the instructions fairly presented to the jury the issues to be tried and sufficiently protected defendant's rights. *People v Head*, 211 Mich App 205, 210-211; 535 NW2d 563 (1995). The jury was, therefore, appropriately instructed on the elements and burden of proof of self-defense.

Third, defendant argues that there was insufficient evidence to support the verdict. We disagree. "When reviewing a claim regarding the sufficiency of the evidence, this Court examines the evidence in a light most favorable to the prosecution to determine if a rational jury could find that the essential elements of the offense were proved beyond a reasonable doubt." *People v Joseph*, 237 Mich App 18, 20; 601 NW2d 882 (1999).

Defendant's entire argument relates to the credibility of the trial witnesses. However, questions of credibility are issues left to the factfinder and will not be resolved anew by this Court. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). Accordingly, we conclude that defendant has failed to demonstrate that the evidence was insufficient.

Alternatively, defendant argues that the verdict was against the great weight of the evidence. This argument must also fail, as this issue was not preserved at trial and defendant has failed to demonstrate that a plain error exists. *Carines, supra*; *People v Noble*, 238 Mich App 647, 658; 608 NW2d 123 (1999).

Affirmed.

/s/ Helene N. White
/s/ William C. Whitbeck
/s/ Donald E. Holbrook, Jr.