STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 25, 2011
v	No. 295315 Wayne Circuit Court
VERNITA ROBBS-ALEXANDER, Defendant-Appellant.	LC No. 09-005048-FH

Before: JANSEN, P.J., and OWENS and SHAPIRO, JJ.

PER CURIAM.

Defendant appeals by right her jury-trial convictions of aggravated stalking, MCL 750.411i, and witness intimidation (threatening to kill or injure), MCL 750.122(7)(c), for which she was sentenced to 18 months' probation.[1] We affirm.

I

Defendant's son had a child with Talia Costner. On the morning of January 2, 2009, Costner and her aunt, Syeeda Daniels, went to pick up the child, who had been visiting defendant's son. When Costner and Daniels arrived to pick up the child, defendant's son came outside and began shooting a gun at their vehicle. Defendant's son was ultimately arrested and criminally charged as a result of the shooting. Daniels was called as a witness in the case against defendant's son.

Daniels soon began to receive threatening and harassing telephone calls from defendant. Daniels recognized defendant's voice because she had known defendant for about five years. Defendant allegedly swore at Daniels several times, told Daniels that she was going to "get [Daniels] and [her] family," and told Daniels that she was going to "kill [Daniels] and [her] family." Defendant subsequently called Daniels again and informed Daniels that she had just

[1] The jury acquitted defendant of malicious destruction of personal property between $200 and $1,000, MCL 750.377a(1)(c)(*i*), malicious destruction of personal property less than $200, MCL 750.377a(1)(d), and malicious destruction of a building less than $200, MCL 750.380(5).

broken out the windows of Daniels's vehicle. Daniels looked outside after receiving this subsequent call and saw a black Oldsmobile that belonged to defendant's daughter parked on the street in front of her house. When Daniels later went outside, she found that the windows of her vehicle had been broken.

A few days later, the front window of Daniels's house was broken. Daniels was not at home when the window was broken, but her children were.[2] That same day, Daniels received another telephone call from defendant. This time, defendant allegedly told Daniels that she had "bullets for [Daniels] and [her] family," and that she had "enough [bullets] for all of [Daniels's family]." Daniels testified that defendant's repeated telephone calls made her feel "[s]cared and afraid." Over the next several days, Daniels received additional threatening telephone calls. During that same period, someone slashed the tires on Daniels's vehicle and allegedly put sugar in her vehicle's gasoline tank. Daniels did not actually witness anyone vandalizing her vehicle, but did take photographs of the damaged vehicle and file a police report.

Daniels testified that, in total, she received approximately 10 threatening telephone calls from defendant. Daniels testified that during at least one of the calls, defendant told her "not to come to court." The prosecution maintained that the threatening and intimidating telephone calls were placed by defendant in an attempt to dissuade Daniels from appearing as a witness against defendant's son.

The defense did not present any witnesses at defendant's trial, and instead relied solely on what it perceived to be the weaknesses in the prosecution's case. As noted previously, the jury convicted defendant of aggravated stalking and witness intimidation, but acquitted her on three other counts.

II

Defendant first argues that the prosecutor committed misconduct during her closing argument by vouching for the credibility of Daniels, the prosecution's principal witness. We disagree.

Because the challenged prosecutorial statements were not preserved by way of a contemporaneous objection and request for a curative instruction, appellate review is for outcome-determinative, plain error. *People v Unger*, 278 Mich App 210, 235; 749 NW2d 272 (2008).

"Prosecutors are typically afforded great latitude regarding their arguments and conduct at trial." *Id*.; see also *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995). "They are

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[2] Daniels's daughter testified that she witnessed defendant running from the front of Daniels's home and toward a parked black car immediately after the front window was broken. Daniels's daughter also testified that she found a large rock on the front porch of her mother's house after the window was broken. She surmised that defendant had thrown the rock at the window.

generally free to argue the evidence and all reasonable inferences from the evidence as it relates to their theory of the case." *Unger*, 278 Mich App at 235. However, a prosecutor may not vouch for the credibility of a witness or suggest that he or she has some "special knowledge" concerning a witness's truthfulness. *Bahoda*, 448 Mich at 276.

Defendant takes issue with certain remarks made by the prosecutor during her closing argument. Specifically, defendant challenges that portion of the closing argument in which the prosecutor stated:

> Now if Ms. Daniels wanted to make up a story about all of this, how this happened and when this happened and where this happened, if . . . you're gonna lie about something like that, wouldn't it be easier to just say I saw [defendant?] I saw her and this is what she did[?] [B]ut she was telling the truth. She told exactly what she saw. She said on one occasion when her front window was broken out, she wasn't at home and on another occasion she said that . . . she didn't see the defendant but she saw her car.
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> So it's easier if you're gonna [sic] tell a lie, to say oh I saw her; I saw her standing out there . . . breaking out the windows and all that kind of thing; you know if you're gonna [sic] make something up[.] [S]he's telling the truth and her daughter . . . is telling the truth[.]

Viewed in context, *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001), it is apparent that these challenged prosecutorial remarks did not rise to the level of improper vouching. The prosecutor did not improperly attempt to bolster Daniels's credibility based on some undisclosed fact; nor did the prosecutor imply that she had any "special knowledge" concerning the truthfulness of Daniels's testimony. *Bahoda*, 448 Mich at 276. Instead, the prosecutor relied on the facts in evidence to argue that Daniels did not embellish her testimony and that Daniels had merely reported what she personally observed. It is well settled that "the prosecutor may argue from the facts that a witness should be believed." *People v McGhee*, 268 Mich App 600, 630; 709 NW2d 595 (2005).

Moreover, even if the challenged remarks had been improper, "[c]urative instructions are sufficient to cure the prejudicial effect of most inappropriate prosecutorial statements . . . and jurors are presumed to follow their instructions." *Unger*, 278 Mich App at 235. Because a timely objection and request for a curative instruction could have alleviated any possible prejudicial effect of the challenged remarks, we can find no error requiring reversal. *Id.*

III

Defendant next argues that because she was personally acquainted with juror number 6 and because there was "bad blood" between them, the trial court abused its discretion by denying her motion for a new trial. We cannot agree.

In criminal cases, the trial court may grant a new trial "on any ground that would support appellate reversal of the conviction" or whenever the court determines "that the verdict has resulted in a miscarriage of justice." MCR 6.431(B); see also MCL 770.1. We review for an abuse of discretion the trial court's decision to grant or deny a motion for a new trial. *People v*

Miller, 482 Mich 540, 544; 759 NW2d 850 (2008). An abuse of discretion occurs when the trial court's decision falls outside the range of principled outcomes. *Id*.

After the jury returned its verdict but before sentencing, defense counsel moved for a new trial on the ground that defendant was personally acquainted with juror number 6. The motion alleged that one of defendant's close friends, Hilda Charles, had once been married to the same man who later married juror number 6. Defense counsel asserted that "bad blood" existed between defendant and juror number 6 as a result of defendant's friendship with Charles.[3] The motion further alleged that defendant had interacted with juror number 6 in the past at certain meetings or social functions. Defendant argued that juror number 6 had violated her oath by failing to disclose during voir dire that she was acquainted with defendant.

The trial court denied defendant's motion. The court noted that defendant should have brought this matter to the attention of her attorney sooner, and questioned why defendant waited until after the verdict was delivered to disclose her alleged personal relationship with juror number 6. Defendant told the court that she had informed her attorney of the matter at the beginning of trial, during the selection of the jury. But defense counsel denied this, stating that she did not recall defendant ever telling her until after the verdict was delivered that she personally knew juror number 6. The trial court ruled that defendant's alleged past relationship with juror number 6 was "too abstract" and "too far removed." The court also determined that defendant had waited too long to raise the issue, waiting until after the verdict was returned to disclose the alleged relationship. In the end, the trial court noted that it could not perceive "any type of relationship that would have a negative impact" on the fairness or outcome of defendant's trial.

We cannot conclude that the trial court's denial of defendant's motion for a new trial fell outside the range of principled outcomes. *Miller*, 482 Mich at 544. "'The Sixth Amendment only requires that the jury be free from bias.'" *Id*. at 547 n 6 (citation omitted). Regardless of whether defendant informed her attorney of her past relationship with juror number 6 at the beginning of trial or only after the verdict was delivered, the fact remains that there was *no evidence* to prove that the juror's failure to disclose the relationship resulted in actual bias to defendant. *Id*. "[J]urors are 'presumed to be . . . impartial, until the contrary is shown.'" *Id*. at 550, quoting *Holt v People*, 13 Mich 224, 228 (1865). "The burden is on the defendant to establish that the juror was not impartial . . . ." *Miller*, 482 Mich at 550. Apart from counsel's assertions that there was "bad blood" between defendant and juror number 6, and that defendant and juror number 6 may have had a confrontation in a downtown Detroit parking lot, defendant offered no other evidence to rebut the presumption that juror number 6 acted impartially. See *id*. at 553-554.

Nor is reversal required merely because it is later learned that a juror would have been excusable for cause. *Id* at 561. Instead, "the proper inquiry is whether the defendant was denied

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[3] As made clear at oral argument on defendant's motion, juror number 6 and Hilda Charles "married the same man at different times, but neither of them is married to him now."

his right to an impartial jury." *Id*. Quite simply, defendant has failed to prove that the jury was not impartial in this case. Indeed, defendant has only speculated in her brief on appeal that the "bad blood [between defendant and juror number 6] . . . *could have* impacted [defendant's] right to an impartial jury." (Emphasis added.) Such speculation is not sufficient to warrant appellate relief.

Finally, we cannot omit mention of the fact that defendant was actually acquitted of three of the five charged offenses in this case. Given that juror number 6 voted to acquit defendant of three of the charged offenses, we are disinclined to accept defendant's suggestion that juror number 6 was inherently biased against her. We perceive no error requiring reversal with respect to this issue.

IV

Lastly, defendant argues that she was denied the effective assistance of counsel in two different ways. Defendant first contends that she was denied the effective assistance of counsel when defense counsel failed to object to the prosecutor's allegedly improper comments during closing argument. Defendant also contends that defense counsel performed in a constitutionally deficient manner by failing to timely inform the trial court about juror number 6. Again, we disagree.

Because defendant failed to request a *Ginther*[4] hearing and did not move for a new trial on the ground of ineffective assistance of counsel, our review is limited to mistakes apparent on the record. *People v Davis*, 250 Mich App 357, 368; 649 NW2d 94 (2002).

With respect to defendant's argument that defense counsel performed in a constitutionally deficient manner by failing to object to the prosecutor's comments during closing argument, we have already determined that the challenged prosecutorial remarks were not improper. It is well settled that defense counsel is not ineffective for failing to raise a futile or meritless objection. *Unger*, 278 Mich App at 256; see also *People v Milstead*, 250 Mich App 391, 401; 648 NW2d 648 (2002).

And with regard to defendant's argument that counsel was ineffective for failing to timely inform the trial court about the past relationship with juror number 6, we simply note that counsel informed the court that she did not recall being informed of the relationship until after the verdict was delivered. We acknowledge defendant's contrary assertion that she informed defense counsel of her past relationship with juror number 6 at some earlier time. But we have no reason to doubt the veracity of counsel's representation in open court that defendant did not inform her of the relationship until after trial had concluded. Absent any proof that defense counsel was lying to the court, we presume that her statement in this regard was truthful. See *Surman v Surman*, 277 Mich App 287, 309; 745 NW2d 802 (2007). Moreover, as soon as defense counsel did learn of the alleged relationship, she promptly moved to set aside the verdict

[4] *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).

and sought a new trial for defendant. We accordingly find no merit in defendant's argument that counsel was ineffective for failing to earlier disclose the alleged past relationship with juror number 6.

Affirmed.

/s/ Kathleen Jansen
/s/ Donald S. Owens
/s/ Douglas B. Shapiro