

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

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
November 22, 2016

v

JUANITA LASHAWN BUTTS,  
  
Defendant-Appellant.

No. 329069  
Wayne Circuit Court  
LC No. 14-008963-01-FC

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Before: M. J. KELLY, P.J., and MURRAY and BORRELLO, JJ.

PER CURIAM.

Defendant Juanita Lashawn Butts appeals as of right her jury trial conviction of armed robbery, MCL 750.529. The trial court sentenced her to serve 51 to 120 months' imprisonment. For the reasons stated in this opinion, we affirm.

**I. BASIC FACTS**

Butt's conviction arises from the robbery of Devin Jackson in September 2014, near the intersection of Greenfield and Lyndon in Detroit. Jackson testified that around 10:30 p.m. he got off the bus that he used to go to and from work. He saw Butts at the bus stop, sitting on a bicycle, and he recognized her as someone he regularly saw selling perfume near the bus stop. He said that as he started to walk home, Butts passed him on her bicycle and then started circling him. He testified that she told him she had a "strap on" and instructed him to "keep going this way" and not to run. Jackson explained that he was directed towards a building where there was a man on a bicycle. Jackson testified that Butts pulled out a gun. He said that the man on the bicycle then came over, took the gun from Butts, and pointed it at him. He said that Butts demanded his phone and money, which he handed over.

Jackson reported the incident to the police, describing Butts and telling the police where she sold perfumes. The police spoke with Butts briefly about selling perfumes without a license, but did not initially question her about the armed robbery. Detective Loren Lozon prepared a photographic lineup and Jackson picked Butts's photograph out. The police asked Butts to come to the police station for questioning, and after a nearly three-hour long interview, Butts signed a statement admitting that she was involved in the armed robbery, but contending that the man on the bicycle had forced her at gunpoint to help him.

At trial, Butts denied any involvement in the robbery and claimed that the investigating officers coerced her confession. The officers, however, denied the use of coercive tactics and claimed that her confession was voluntary.

## II. PROSECUTORIAL MISCONDUCT

### A. STANDARD OF REVIEW

Butts argues that she was denied her constitutional right to a fair trial when the prosecutor improperly bolstered Detective Lozon's credibility during closing argument. This issue is unpreserved because Butts failed to contemporaneously object to the prosecutor's statements. See *People v Thomas*, 260 Mich App 450, 453-454; 678 NW2d 631 (2004). Our review of unpreserved claims of prosecutorial misconduct "is limited to ascertaining whether plain error affected defendant's substantial rights." *People v Brown*, 279 Mich App 116, 134; 755 NW2d 664 (2008). Plain error affects the defendant's substantial rights if the error prejudices the defendant. *People v Cooper*, 309 Mich App 74, 88; 867 NW2d 452 (2015).

### B. ANALYSIS

Prosecutors are typically afforded great latitude regarding their arguments. *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995). They are generally free to argue the evidence and all reasonable inferences as may relate to their theory of the case, and they are not required to confine their statement to the blandest possible terms. *People v Dobek*, 274 Mich App 58, 66; 732 NW2d 546 (2007). We review a claim of prosecutorial misconduct "on a case-by-case basis by examining the record and evaluating the remarks in context, and in light of defendant's arguments." *Thomas*, 260 Mich at 454.

During closing argument, Butts's lawyer argued that "there is no question, according to Detective Lozon's testimony, that he was seeking some information or a statement from [Butts]. And he wasn't going to rest until he got it." Butts's lawyer further explained that Butts denied involvement in the crime during the interview, but stated that Lozon "didn't accept that answer." Butts's lawyer also questioned the police officers' decision not to record the interview.

During rebuttal, the prosecutor argued:

Wasn't going to rest until he got something? Could you imagine if the entire police force was made up of individuals who, after one question said, hey, were you involved in this crime, and the person said no; and they said, oh, all right, have a nice day? Could you imagine the state that we'd be in if we had police officers like that?

Detective Lozon should be commended for spending the time and digging into what was going on in this case. He knew [Butts] was picked out of a lineup, a photo lineup by [Jackson]. [Jackson] told him that [Butts] was the one that robbed him. [Lozon] didn't do anything wrong for asking more questions, digging deeper.

On appeal, Butts argues that the prosecutor's statement "Detective Lozon should be commended for spending the time and digging into what was going in this case" served to improperly bolster Lozon's credibility. It is improper for a prosecutor to use special knowledge to vouch for the credibility of a witness. *Thomas*, 260 Mich App at 455. However, a prosecutor is not prohibited from commenting on his or her own witnesses' credibility during closing arguments, "especially when there is conflicting evidence and the question of the defendant's guilt depends on which witnesses the jury believes." *Id.*

Here, the police officers and Butts offered conflicting accounts about the circumstances surrounding Butts's interview and decision to sign a statement admitting involvement in the armed robbery. As such, the jury had to weigh the officers' testimony against Butts's testimony. Given that Butts's lawyer directly challenged Lozon's credibility by arguing that Butts's statement was coerced, it was proper for the prosecutor to comment on Lozon's credibility in rebuttal. Further, the prosecutor in this case did not ask the jury to defer to the judgment of himself or the police officers as was the case in *People v Farrar*, 36 Mich App 294, 297; 193 NW2d 363 (1971) and *People v Humphreys*, 24 Mich App 411, 418; 180 NW2d 328 (1970). Instead, the prosecutor attempted to refute the allegations of Butts's lawyer by showing that the officers conducted a thorough investigation. On this record, the prosecutor's comments during rebuttal were not improper.

### III. INEFFECTIVE ASSISTANCE

#### A. STANDARD OF REVIEW

Butts next argues that her trial lawyer provided ineffective assistance by failing to object to the prosecutor's comments during closing argument. Because the trial court did not hold an evidentiary hearing on this issue, our review is limited to mistakes that are apparent on the record. *People v Gioglio (On Remand)*, 296 Mich App 12, 20; 815 NW2d 589 (2012), remanded for resentencing 493 Mich 864.

#### B. ANALYSIS

In order to establish that her trial lawyer provided ineffective assistance, Butts "must show both that counsel's performance was deficient and that counsel's deficient performance prejudiced the defense." *People v Riley (After Remand)*, 468 Mich 135, 140; 659 NW2d 611 (2003), citing *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984). A trial lawyer's performance is deficient when it falls "below an objective standard of reasonableness under prevailing professional norms." *Riley*, 468 Mich at 140. A defendant is prejudiced if there is a reasonable probability that, "but for" her lawyer's errors, "the result of the proceeding would have been different." *People v Heft*, 299 Mich App 69, 81; 829 NW2d 266 (2012). However, when an objection during the trial would be futile, a claim for ineffective assistance must fail because the failure to make a futile objection is not deficient performance. *Cooper*, 309 Mich App at 91. Here, because the prosecutor's comments during rebuttal argument were not improper, any objection would have been futile. Thus, the trial lawyer's failure to object to the statement does not constitute ineffective assistance.

Affirmed.

/s/ Michael J. Kelly  
/s/ Christopher M. Murray  
/s/ Stephen L. Borrello