

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
March 19, 2013

v

TINA DALTON,

Defendant-Appellant.

No. 308707
Wayne Circuit Court
LC No. 11-010067-FC

Before: GLEICHER, P.J., and SAWYER and FORT HOOD, JJ.

PER CURIAM.

Defendant appeals as of right her jury trial convictions of seven counts of assault with the intent to commit murder, MCL 750.83, sending explosives with the intent to injure persons (resulting in serious impairment of a body function), MCL 750.204(2)(d), sending explosives with the intent to injure persons (resulting in physical injury), MCL 750.204(2)(c), sending explosives with the intent to injure persons (resulting in property damage), MCL 750.204(2)(b), sending explosives with the intent to injure, MCL 750.204(2)(a), and arson of a dwelling, MCL 750.72. Defendant was sentenced, as a fourth habitual offender, MCL 769.12, to 40 to 60 years for each of the above convictions. We affirm.

On appeal defendant argues that the prosecution committed misconduct during the presentation of its closing argument and that this prejudiced defendant. While we conclude that the prosecution did commit one instance of prosecutorial misconduct, we hold that defendant was not prejudiced due to the trial court’s jury instructions.

To preserve a claim of prosecutorial misconduct, a defendant must object to an alleged prosecutorial impropriety. *People v Aldrich*, 246 Mich App 101, 110; 631 NW2d 67 (2001). Because defendant did not object during the prosecution’s closing argument, this issue is not preserved for appeal. “Where a defendant fails to object to an alleged prosecutorial impropriety, the issue is reviewed for plain error.” *Id.*, quoting *People v Carines*, 460 Mich 750, 752-753; 597 NW2d 130 (1999). A plain error is one that is “clear or obvious,” and the error must affect the defendant’s “substantial rights.” *Carines*, 460 Mich at 763. That is, defendant must have been prejudiced by the plain error. *Id.* “Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error seriously affected the fairness, integrity or public reputation of judicial proceedings independent of the defendant’s innocence.” *Id.* at 763-764 (internal quotations and alterations omitted).

Generally, “[p]rosecutors are accorded great latitude regarding their arguments and conduct.” *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995) (internal citations omitted). When reviewing closing arguments for prosecutorial misconduct, this Court must examine the prosecutor’s remarks in context to determine if the defendant received a fair trial. *Id.* at 266-267. Prosecutors are “free to argue the evidence and all reasonable inferences from the evidence as it relates to [their] theory of the case.” *Id.* However, a prosecutor’s latitude is not limitless. *Id.* In fact, “prosecutors should not resort to civic duty arguments that appeal to the fears and prejudices of jury members or express their personal opinion of a defendant’s guilt, and must refrain from denigrating a defendant with intemperate and prejudicial remarks.” *Id.* at 282-283 (internal footnotes omitted). “Included in the list of improper prosecutorial commentary or questioning is the maxim that the prosecutor cannot vouch for the credibility of his witnesses to the effect that he has some special knowledge concerning a witness’[s] truthfulness.” *Id.* at 279. Additionally, “[a]ppeals to the jury to sympathize with the victim constitute improper argument.” *People v Watson*, 245 Mich App 572, 591; 629 NW2d 411 (2001). Furthermore, “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).

Defendant makes three separate arguments regarding prosecutorial misconduct. First, defendant makes a general argument that the prosecutor committed misconduct when the prosecutor addressed the issue of Angel Boggs’s credibility in her closing argument. This Court must examine the closing argument as a whole, not just the individual statements made by the prosecutor. *Bahoda*, 448 Mich at 266-267. Angel’s credibility was of central importance to the case because she was the only witness who saw defendant throw the Molotov Cocktail at the family’s home. Because prosecutors are given wide latitude, and because the prosecutor only pointed to existing facts in the record to support her argument that Angel’s testimony could be believed by the jury, the prosecutor did not commit prosecutorial misconduct. Furthermore, even if the prosecutor’s comments constituted misconduct, the trial court’s jury instructions cured any error because the instructions specifically provided that statements made by the attorneys were not evidence and that credibility was for the jury to decide.

Second, defendant argues that the prosecutor committed misconduct in her closing argument by appealing to the jury’s sympathy by focusing on Angel’s youth. Once again, this Court must look at these statements in context of the entire closing argument. *Bahoda*, 448 Mich 266-267. In *Watson*, this Court examined the following prosecutorial statement made during a closing argument:

Members of the jury, in that darkness that Defendant attacked his stepdaughter . . . and he did something to her that no one should do to any other human being. He treated her in a way that no animal should be treated. [*Watson*, 245 Mich App at 591.]

While the defendant argued that this appealed to the jury to sympathize with the victim, this Court held that, because this comment was “isolated” and because the statement “was not so inflammatory as to prejudice [the] defendant,” the prosecution did not commit prosecutorial misconduct. *Id.* Similarly, in this case, the prosecutor’s statements regarding Angel’s youth and her bravery for testifying, while pushing the boundaries, are isolated and they were not so inflammatory that they prejudiced defendant. Again, even if the prosecutor’s comments

constituted misconduct, the trial court's jury instructions, which provided that the attorneys' statements were not evidence and that credibility was an issue for the jury, cured any error.

Third, defendant argues that the prosecutor committed misconduct in her rebuttal of defendant's closing argument by vouching for and bolstering Angel's credibility. The prosecution's rebuttal argument made in response to defendant's closing argument constitutes prosecutorial misconduct. In particular, the prosecutor stated that her work with child abuse victims helped her understand children's psyches. This Court has made clear that a "prosecutor cannot vouch for the credibility of his witnesses to the effect that he has some special knowledge concerning a witness' truthfulness." *Bahoda* 448 Mich at 279. Here, the prosecutor attempted to explain that, based on her experiences, she understood how illogical children could be; thus, she justified for the jury the reason why Angel destroyed the notes she received from defendant. The prosecutor relied on her unique experiences of working with children to explain why Angel should be believed. This form of bolstering constitutes prosecutorial misconduct. *Id.* However, jury instructions are considered to "cure most errors." *Abraham*, 256 Mich App at 279. The trial judge specifically told the jury that "[t]he lawyers' statements and their arguments are not evidence." Because jurors are presumed to follow the instructions, it is presumed that the prosecutor's misconduct in bolstering Angel's credibility was cured by the court's providing the jury with a jury instruction telling them they could not consider the prosecutor's statements as evidence and that credibility is for the jury.

Affirmed.

/s/ Elizabeth L. Gleicher

/s/ David H. Sawyer

/s/ Karen M. Fort Hood