

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTEL JEANEEN MONTGOMERY,

Defendant-Appellant.

UNPUBLISHED

February 21, 2003

No. 235559

Oakland Circuit Court

LC No. 99-168358-FH

Before: O’Connell, P.J., and Fitzgerald and Murray, JJ.

MEMORANDUM.

Defendant was convicted by a jury of delivery of less than 50 grams of a controlled substance (cocaine), MCL 333.7401(2)(a)(iv), for which she was sentenced to serve lifetime probation. She appeals as of right, and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that the prosecutor improperly asked Simeon “Rick” Willis—the sole defense witness—whether he believed that Officer Michael Farley had lied during his testimony. Although defense counsel did object to this line of questioning, the objection was based on lack of foundation, rather than the specific objection being raised now, and no curative instruction was requested. As such, the issue is unpreserved, MRE 103(a)(1); *People v Thompson*, 193 Mich App 58, 62; 483 NW2d 428 (1992), and this Court’s review is limited to a determination whether plain error occurred that was outcome determinative. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

In Michigan, it is well established that a prosecutor is not permitted to ask the defendant or other defense witnesses to comment on the credibility of prosecution witnesses because such opinions are not probative of the defendant’s guilt and credibility determinations are the domain of the trier of fact. *People v Buckley*, 424 Mich 1, 17; 378 NW2d 432 (1985); *People v Knapp*, 244 Mich App 361, 384; 624 NW2d 227 (2001); *People v Messenger*, 221 Mich App 171, 180; 561 NW2d 463 (1997); *People v Bettistea*, 173 Mich App 106, 116; 434 NW2d 138 (1988); *People v Loyer*, 169 Mich App 105, 116-117; 425 NW2d 714 (1988). In light of this longstanding evidentiary rule, we rebuke the prosecutor’s conduct in this case.

Nonetheless, we find the plain error to be harmless because defendant’s substantial rights were not prejudiced. *Carines, supra*. Here, there is no evidence of bad faith on the part of the prosecutor and any prejudice to defendant was minimized because (1) the questions were posed

to Willis, not defendant, (2) Willis appeared to handle the questions reasonably well, suggesting that Officer Farley was “mistaken” in his testimony, rather than lying, and (3) the prosecutor’s line of questioning was in direct response to the defense theory that Officer Farley’s version of the incident was not credible. *Buckey, supra* at 17; *Knapp, supra* at 385. Accordingly, any error was harmless.

Affirmed.

/s/ Peter D. O’Connell
/s/ E. Thomas Fitzgerald
/s/ Christopher M. Murray