

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

XAVIER L. BURTON,

Defendant-Appellant.

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UNPUBLISHED

January 20, 2004

No. 230894

Wayne Circuit Court

LC No. 99-007272

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

XAVIER BURTON,

Defendant-Appellee.

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No. 239185

Wayne Circuit Court

LC No. 99-007272

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

XAVIER BURTON,

Defendant-Appellee.

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No. 245627

Wayne Circuit Court

LC No. 99-007272

Before: Gage, P.J., and White and Cooper, JJ.

WHITE, J. (*concurring*).

I agree that defendant's conviction was supported by sufficient evidence.

I concur in the conclusion that the trial court did not abuse its discretion in granting a new trial. In so concurring, I recognize that the remarks concerning defense counsel's questions being unintelligible can fairly be seen as being responsive to defense counsel's arguments regarding the credibility of the witnesses. However, the prosecutor made other remarks, most notably to the effect that defense counsel was simply talking loudly and saying nothing because he knew his client was guilty, and that the misidentification defense was a figment of defense counsel's imagination. In granting the motion for new trial, the court made clear that it had a vivid recollection of the closing arguments, and that it was apparent at the time that the prosecutor had crossed the line, and that this affected the trial. While this may be a close call, I defer to the superior ability of the trial court to determine whether the prosecutor's objectionable comments denied defendant a fair trial.

/s/ Helene N. White