STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT YARBROUGH, JR.,

Defendant-Appellant.

UNPUBLISHED
April 30, 2020

No. 347400
Wayne Circuit Court
LC No. 18-000425-01-FC

Before: MURRAY, C.J., and RONAYNE KRAUSE and TUKEL, JJ.

PER CURIAM

Defendant appeals as of right his jury trial convictions of kidnapping, MCL 750.349, assault with a dangerous weapon, MCL 750.82, assault by strangulation, MCL 750.84, and three counts of first-degree criminal sexual conduct (CSC-I) (multiple variables), MCL 750.520b. Defendant was sentenced, as a fourth-offense habitual offender, MCL, 769.12, to 40 to 60 years' imprisonment for each count of CSC-I, kidnapping, and assault by strangulation, and to 7 to 15 years' imprisonment for assault with a dangerous weapon. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E)(1).

I. BACKGROUND

This case arises from an incident that occurred at a house on Leicester Court in Detroit. The victim, SH, and a friend drove to the neighborhood to pick up money defendant owed SH. SH got out of the car, and defendant led her into the upper flat of a nearby house. He removed the battery from her phone and began choking her and hitting her in the face before dragging her to a rear bedroom. Over the course of the night, defendant forcibly penetrated SH's mouth, vagina, and anus while choking her, pinching her with pliers, and hitting her with a hammer. He manually restrained her multiple times when she attempted to escape. He threatened to bury her alive in cement and let her suffocate. He tied her hands, feet, and neck together with a rope and put a scarf in her mouth.

SH was able to escape after approximately 20 hours, when defendant left her tied up and went out to purchase two douches to "douche the evidence out of [her]." SH was able to get her feet out of the rope and ran outside, where she was eventually able to find someone who let her

use a phone to call 911. A forensic examination revealed 28 distinct injuries to SH's head, neck, extremities, and genitals. A rape kit was performed. The police recovered a hammer from the scene. DNA analysis yielded "very strong support" that defendant contributed the male DNA found in the rape kit and "very strong support" that defendant and SH had contributed DNA to the hammer. SH testified that she never had consensual sex with defendant in the two or three months that she knew him. Defendant was convicted of all charged offenses. Defendant now appeals.

II. SUFFICIENCY OF THE EVIDENCE

Defendant argues that the prosecution failed to produce evidence sufficient to convict him of any offense because the jury was not required to believe SH's account, and the investigators who conducted the forensic examination and DNA analyses lacked personal knowledge of what occurred between defendant and SH. We disagree.

A. STANDARD OF REVIEW

The sufficiency of the evidence upon which a defendant was convicted is reviewed de novo. *People v Harverson*, 291 Mich App 171, 175-177; 804 NW2d 757 (2010). The evidence is viewed "in a light most favorable to the prosecutor to determine whether any trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt." *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012) (quotation marks and citation omitted). The prosecution "is not obligated to disprove every reasonable theory consistent with innocence . . . ; it need only convince the [fact-finder] in the face of whatever contradictory evidence the defendant may provide." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000) (quotation omitted).

The gravamen of defendant's argument is that the evidence was insufficient because the only direct evidence of his guilt was derived from SH's testimony. Even if that was an accurate summary of the evidence, "[i]n criminal sexual conduct cases, a victim's testimony may be sufficient to support a defendant's conviction and need not be corroborated." *People v Solloway*, 316 Mich App 174, 181; 891 NW2d 255 (2016). Indeed, the testimony of a single witness or of only a complainant may, if believed by the jury, be sufficient in any criminal matter to support a finding of guilt beyond a reasonable doubt. See *People v Konvinski*, 30 Mich App 271, 274; 186 NW2d 86 (1971); *People v Newby*, 66 Mich App 400, 405; 239 NW2d 387 (1976); *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). This Court may not interfere with the trier of fact's weighing of the evidence and assessment of the witnesses' credibilities. *People v Kanaan*, 278 Mich App 594, 620-621; 751 NW2d 57 (2008). "[A] reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *Nowack*, 462 Mich at 400.

B. CSC-I

The crime of CSC-I requires, in relevant part, sexual penetration of another person under any of several circumstances, including the commission of another felony, the actor is or reasonably appears to be armed, or the actor injures the victim and used force or coercion to accomplish the sexual penetration. MCL 750.520b(1)(c), (e), (f). CSC-I is a general intent crime, *People v Nyx*, 479 Mich 112, 117-118; 734 NW2d 548 (2007), so it "only requires proof that the

defendant purposefully or voluntarily performed the wrongful act." *People v Henry*, 239 Mich App 140, 144; 607 NW2d 767 (1999).

SH testified, "[defendant] raped me numerous times. He stuck his penis in me more than once. More than twice. More than three. More than four. More than five." She testified that he forcibly penetrated her mouth, vagina, and anus while "constantly" hitting and choking her. She testified that he struck her with a hammer and pinched her ear, shoulder, and finger with pliers. He showed her a "black pole" and a knife and asked her if she wanted to strike or stab him. She threw those weapons away because she was afraid defendant would wrest them back from her. Defendant's sexually assaultive conduct recurred again and again for hours and hours. He prevented SH from escaping or asking for help multiple times; he told her he was going to bury her alive in concrete with only a straw to breathe from until she suffocated.

The forensic examination of SH revealed 28 distinct injuries all over her body, including her genitals. The examining nurse testified that SH's injuries—"the most significant" she had seen in over 600 forensic examinations—were "very consistent" with SH's account. The nurse's photographs of the injuries were published to the jury. DNA analysis showed that male DNA found on SH's torn labia minora were 21 octillion times more likely to have originated from defendant than from an unknown donor. SH testified that she never had consensual sex with defendant during the two or three months she had known him. She identified the black-handled hammer that the police recovered as the one defendant hit her with while raping her. DNA analysis of that hammer yielded "very strong support" that SH and defendant were donors.

SH's testimony, the medical forensic examination, and the DNA analyses, viewed in the light most favorable to the prosecution, are sufficient to establish that defendant voluntarily engaged in sexual penetration while committing other felonies, while armed with weapons, while causing personal injury, and while using force or coercion to accomplish penetration. Therefore, the prosecution produced evidence sufficient, under three distinct subsections of MCL 750.250b, to establish three or more counts of CSC-I beyond a reasonable doubt. See MCL 750.250b(1)(c), (e), and (f).

C. KIDNAPPING

Kidnapping is accomplished, in relevant part, by knowingly restraining another person with the intent of engaging in a CSC offense with that person. MCL 750.349(1)(c). The specific intent required to support a kidnapping conviction "can be established inferentially on the basis of [the defendant's] conduct during the [time] in question." *People v Jaffray*, 445 Mich 287, 303; 519 NW2d 108 (1994).

SH testified that defendant used multiple methods to restrain her from escaping. He pulled her jacket and shirt over her head and dragged her to the bedroom before raping her multiple times. He choked her, beat her, and used a hammer and pliers as weapons to retaliate when she attempted to escape or ask others in the house for help. He made multiple statements, such as "you're not going anywhere" and "[b]itch, don't even try it; lay your ass back the fuck down," to convey the futility of escape attempts. He pulled her back when she attempted to jump out of the second-story window. He tied her wrists with a rope, which he then tied to her feet and her neck before laying her in bed and placing a scarf around her mouth.

SH's testimony, viewed in the light most favorable to the prosecution, is sufficient to support inferences that defendant knowingly restrained SH and, as stated earlier, that he intended to engage in criminal sexual penetration. Therefore, the prosecution presented evidence sufficient to establish the elements of kidnapping beyond a reasonable doubt.

D. ASSAULTS

Defendant was convicted of assault by strangulation, MCL 750.84, and assault with a dangerous weapon, MCL 750.82. An assault is "either an attempt to commit a battery or an unlawful act that places another in reasonable apprehension of receiving an immediate battery." *People v Starks*, 473 Mich 227, 234; 701 NW2d 136 (2005). A battery is "an intentional, unconsented and harmful or offensive touching of the person of another, or of something closely connected with the person." *Id*. (quotation omitted). " '[S]trangulation or suffocation' means intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person." MCL 750.84(2). A "dangerous weapon can . . . be an instrumentality which, although not designed to be a dangerous weapon, is used as a weapon and, when so employed, is dangerous." *People v Bosca*, 310 Mich App 1, 21; 871 NW2d 307 (2015), app for lv held in abeyance on other grounds 911 NW2d 465 (2018) (quotation and citation omitted). Assault requires either the specific intent to cause injury or the specific intent to place another person in reasonable fear of receiving an imminent battery. *People v Johnson*, 407 Mich 196, 210; 284 NW2d 718 (1979). "Intent may be inferred from a defendant's words, acts, means, or the manner used to commit the offense." *Bosca*, 310 Mich App at 21 (quotation omitted). Even if "actual injury to the victim is not an element of the crime, injuries suffered by the victim may also be indicative of a defendant's intent[.]" *People v Stevens*, 306 Mich App 620, 629; 858 NW2d 98 (2014) (citations omitted).

SH testified that defendant choked her, hit her with a hammer, and pinched her with pliers throughout the period in which he kidnapped and raped her. She identified the black-handled hammer that the police recovered from the scene and which contained defendant's and SH's DNA. The forensic examination revealed "several abrasions" on SH's neck, "tenderness" on her head, bruises and lacerations on her arms and wrists, a swollen finger, a swollen knee, and "red linear abrasions" on her nose. She had a "raspy, hoarse voice, and was coughing"; "she had trouble swallowing, neck pain." Swabs of her neck revealed the presence of male DNA. SH's testimony, the medical forensic examination, and the DNA analyses, viewed in the light most favorable to the prosecution, are sufficient to establish that defendant, intentionally and without consent, touched SH in a harmful or offensive manner by applying pressure to her throat or neck and by employing a hammer as a dangerous weapon. Therefore, the prosecution presented evidence sufficient to establish the elements of assault with a dangerous weapon and assault by strangulation beyond a reasonable doubt.

SH's testimony was never meaningfully impeached. To the contrary, it was overwhelmingly corroborated by the forensic examination and the physical evidence the police gathered from the scene. Defendant provides no authority to support his argument that a victim's testimony corroborated by physical evidence is constitutionally insufficient to convict an accused unless investigators or another third-party witnessed a criminal act first-hand. Indeed, as

discussed, defendant's assertion is directly contrary to long-established law.[1] Therefore, the prosecution produced evidence sufficient to establish the elements of all charged offenses beyond a reasonable doubt.

III. PEREMPTORY CHALLENGES

The trial court apparently employed a jury voir dire practice under which a party may only exercise peremptory challenges to newly-seated potential jurors who replaced a dismissed juror; parties were not permitted to peremptorily challenge any seated juror on whom the party had already passed. Defendant argues that the trial court's practice was an abuse of discretion and requires automatic reversal. We agree that the trial court's practice was an abuse of its discretion, but we disagree that it requires automatic reversal.

A. STANDARD OF REVIEW

A trial court's conduct of voir dire is reviewed for an abuse of discretion. *People v Tyburski*, 445 Mich 606, 619; 518 NW2d 441 (1994). "An abuse of discretion occurs when the trial court chooses an outcome that falls outside the range of principled outcomes." *People v March*, 499 Mich 389, 397; 886 NW2d 396 (2016) (quotation omitted). "A trial court necessarily abuses its discretion when it makes an error of law." *People v Duncan*, 494 Mich 713, 723; 835 NW2d 399 (2013). A trial court's interpretation of a statute or court rule is reviewed de novo. *People v Chavis*, 468 Mich 84, 91; 658 NW2d 469 (2003). The right to a peremptory challenge is granted by statute and court rule, not by Constitution. *People v Bell*, 473 Mich 275, 294-295; 702 NW2d 128 (2005). Therefore, an erroneous denial of a peremptory challenge is not subject to automatic reversal, but rather is reviewed for "a miscarriage of justice." *Id*. Thus, reversal is only warranted if "after an examination of the entire cause, it shall affirmatively appear that it is more probable than not that the error was outcome determinative." *People v Lukity*, 460 Mich 484, 496; 596 NW2d 607 (1999) (quotation marks and citation omitted).

B. ANALYSIS

MCR 2.511(G) provides: "After the jurors have been seated in the jurors' box and a challenge for cause is sustained or a peremptory challenge or challenges exercised, another juror or other jurors must be selected and examined. Such jurors are subject to challenge as are previously seated jurors." MCR 2.511(E)(3)(b) provides: "A 'pass' is not counted as a challenge but is a waiver of further challenge to the panel *as constituted at that time*." (Emphasis added.) Thus, if the composition of the jury panel changes for any reason after a party has passed on the panel, the party may then exercise any further remaining peremptory challenges to any member of the newly-composed panel. *People v Schmitz*, 231 Mich App 521, 529-530; 586 NW2d 766 (1998), overruled on other grounds by *Bell*, 473 Mich at 293-295. The trial court's peremptory

[1] We have some difficulty believing that this argument could possibly have been considered "well grounded in fact and [] warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law" after undertaking a "reasonable inquiry." MCR 1.109(E)(5)(b). We will, however, afford defendant's counsel the benefit of the doubt.

challenge restriction therefore violated the plain language of MCR 2.511(E)(3)(b) and (G), so it was an abuse of the trial court's discretion.

Defendant's argument that the error requires automatic reversal is based on the portion of *Schmitz* that was expressly overruled by our Supreme Court in *Bell*. In *Bell*, our Supreme Court stated:

> In light of our conclusion that the trial court's initial error was cured, we need not address whether a denial of a peremptory challenge is subject to automatic reversal. Had we concluded, however, as do our dissenting colleagues, that defendant's peremptory challenges had been improperly denied, we would have applied a harmless error standard to the error, because *People v Miller*, 411 Mich 321; 307 NW2d 335 (1981), and [*Schmitz*] are no longer binding, in light of our current harmless error jurisprudence, to the extent that they hold that a violation of the right to a peremptory challenge requires automatic reversal. [*Bell*, 473 Mich at 292-293.]

Defendant contends that the above holding was dicta or a mere hypothetical. We disagree. One concurrence, in part, and two dissents stated it was inappropriate to reach the issue of whether the denial of peremptory challenges was subject to harmless error review. *Id*. at 300-301 (WEAVER, J., concurring in part), *id*. at 312-317 (KELLY, J., dissenting), *id*. at 322-323 (CAVANAUGH, J., dissenting). However, the lead opinion and another partial concurrence agreed that it was appropriate to address the issue and created a rule of law. *Id*. at 292 (CORRIGAN, J., joined by YOUNG and MARKMAN, JJ.), *id*. at 301-302 (TAYLOR, C.J., concurring in part). The lead opinion included an entire section labeled "Standard of Review for Denials of Peremptory Challenges," which was separated from the "Response to the Dissent." *Id*. at 293-298. Therefore, the Court's statements on this issue, signed or agreed to by a majority of the Justices, were more than a passing comment. *Bell*, 473 Mich at 293-298. This Court is bound to follow the decision of our Supreme Court by applying harmless error review to this issue. *People v Anthony*, 327 Mich App 24, 44; 932 NW2d 202 (2019).

It does not "affirmatively appear that it is more probable than not" that the trial court's abuse of discretion was "outcome determinative" in this case. *Lukity*, 460 Mich at 496. The trial court asked each potential juror about their occupations, families, and any interactions or associations they or their families and friends had with the criminal justice system, and sexual assault cases in particular. The trial court instructed potential jurors to consider whether they could set aside their political beliefs regarding publicized incidents of sexual assault. It was also attentive to oblique risks of prejudice, asking one man who was married to a registered nurse the details of his wife's employment because, in the trial court's experience, nurses who frequently treated sexual assault victims were likely to convey prejudicial opinions to their partners. Defense counsel was allowed to thoroughly explain the presumption of innocence and the burden of proof and test the jurors' understanding of those concepts with questions.

Before the first round of challenges, the trial court held a bench conference off the record, where it presumably gave the instruction that the parties were not to challenge jurors they had

previously passed on.[2] Defense counsel had no challenges for cause to the first panel. The prosecution exercised two peremptory challenges. After those jurors were replaced, defense counsel, apparently not bound by the instruction during the first round of challenges, exercised four peremptory challenges. The trial court thoroughly questioned the replacement jurors, and defense counsel exercised two more peremptory challenges to the replacement jurors. The questioning of a replacement juror revealed that his wife had been sexually assaulted; defense counsel successfully exercised another peremptory challenge. The trial court excused one juror who worked with a woman who shared SH's name and another who was an emergency room nurse. Defense counsel exercised another peremptory challenge to a replacement juror for a reason that cannot be inferred from the record. When that juror was replaced, defense counsel declined to exercise any more peremptory challenges and stated, "We have a jury." The trial court adjourned proceedings for lunch, and defense counsel did not raise any objections until the matter was resumed an hour later.

Defense counsel requested "a new venire based upon the fact that [she] would have made challenges" if not for the trial court's instruction. She did not explain which of the previously approved jurors were rendered unacceptable to the defense by the replacement of other jurors or why. On appeal, defendant is equally unable to articulate a theory of prejudice, despite the fact that the voir dire was thorough enough that any risk of prejudice from an impaneled juror or any combination thereof would have been apparent on the record. There is no reason to believe that the impaneled jury was prejudiced against defendant in any way.[3] Defendant's theory of the case—that SH engaged in consensual prostitution because she voluntarily followed defendant into the house and because she did not "act" like a rape victim during the 911 call or at trial—was implausible. As explained earlier, the prosecution's evidence was more than sufficient to convince this jury, or any other, that defendant committed the charged offenses. Therefore, the trial court's error in preventing defense counsel from challenging jurors she had previously passed on was harmless because it did not result in a miscarriage of justice under the "more probable than not" standard. *Bell*, 473 Mich at 294-295 (explaining that the *Lukity* standard applies to the denial of peremptory challenges); *Lukity*, 460 Mich at 496.

IV. JUDICIAL MISCONDUCT

Lastly, defendant argues that he was prejudiced when 1) the trial court made several comments throughout trial that belittled defense counsel but made no such comments toward the prosecutor, and 2) when the trial court provided a witness with the name of a street. We disagree.

[2] We remind the bench that the better practice would be to place any instructions or directions to the parties on the record, especially instructions or directions that contravene the court rules.

[3] We emphasize that the outcome of this appeal might differ if we had a specific record of which jurors counsel would have peremptorily dismissed, especially if we were also provided with reasons why counsel would have exercised those peremptory dismissals.

A. STANDARD OF REVIEW

The issue of whether judicial misconduct denied a defendant a fair and impartial trial is preserved when defense counsel objects to the trial court's conduct. *People v Stevens*, 498 Mich 162, 180; 869 NW2d 233 (2015). Defense counsel never objected to the trial court's conduct or moved for a mistrial. Therefore, the issue is unpreserved. *Id*. "The question whether judicial misconduct denied defendant a fair trial is a question of constitutional law that this Court reviews de novo." *Id*. at 168. However, this Court reviews unpreserved issues for plain error affecting a defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). "Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence." *Id*. (quotations marks and citation omitted; alteration in original).

> A trial judge's conduct deprives a party of a fair trial if the conduct pierces the veil of judicial impartiality. A judge's conduct pierces this veil and violates the constitutional guarantee of a fair trial when, considering the totality of the circumstances, it is reasonably likely that the judge's conduct improperly influenced the jury by creating the appearance of advocacy or partiality against a party. In evaluating the totality of the circumstances, the reviewing court should inquire into a variety of factors including, but not limited to, the nature of the trial judge's conduct, the tone and demeanor of the judge, the scope of the judicial conduct in the context of the length and complexity of the trial and issues therein, the extent to which the judge's conduct was directed at one side more than the other, and the presence of any curative instructions, either at the time of an inappropriate occurrence or at the end of trial. [*Stevens*, 498 Mich at 164.]

"This is a fact-specific inquiry, and we must consider the cumulative effect of any errors." *People v Biddles*, 316 Mich App 148, 152; 896 NW2d 461 (2016).

B. ANALYSIS

Defendant argues that the trial court's statements during defense counsel's cross-examinations—e.g., "[y]ou know I keep hearing this stuff from you[;] it's the same thing over and over"; "slow down so [the witness will] know what you're talking about"; and "[c]ounsel, let's move on because we're just fishing around now"—belittled defense counsel in front of the jury.

The trial court's comments did not pierce the veil of judicial impartiality. A trial court has an affirmative duty to "exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment." MRE 611(a). In fulfilling that obligation, "a court has wide latitude to impose reasonable limits on cross-examination to ensure relevancy or because of concerns regarding such matters as harassment, prejudice, confusion of the issues, and repetitiveness." *Biddles*, 316 Mich App at 153. A trial court's failure to maintain a totally emotionless and insipid demeanor does not necessarily pierce the veil of judicial impartiality,

particularly if any display of frustration was clearly invited by counsel's own conduct. *Id*. at 152-154.

Defense counsel's cross-examination of SH largely repeated the prosecutor's direct examination. Counsel led SH through several insignificant details of her escape, her interviews with the police, and her treatment at the hospital. Her questioning confused the witness by rapidly and inexplicably switching topics and timelines. The trial court allowed such questioning for a time before intervening: "Let's not keep going backwards. Keep going forward, okay?" The trial court supported defense counsel when the witness became frustrated, admonishing the witness: "Now, don't get mad with us, because you've got to answer these questions, okay?" Defense counsel continued with questions of minimal probative value:

> *Q*. Okay. So the initial communications and your evaluations by the doc occur in Henry Ford. Are you discharged at that point?
>
> *A*. Yes, they—no, they sent me to another hospital for the rape kit.
>
> *Q*. Okay. So you're at the hospital, if I understand, for a couple of hours the following day, right?
>
> *A*. Yes, ma'am.
>
> *Q*. Okay. And then after that they discharge you to a different place?
>
> *A*. Yes, ma'am.
>
> *Q*. Okay. And where do you go there?
>
> *A*. I forgot what hospital it was. I think it was Receiving, if I'm not mistaken.
>
> *Q*. Okay. And that's where you had contact with the people who did swabs and that as well?
>
> *A*. Yes, ma'am.
>
> *Q*. And that was when photographs were taken?
>
> *A*. Yes, ma'am.

Additional nonprobative questions about who did what at what hospital confused the witness. Defense counsel started over again: "So did you discharge out of Receiving Hospital or Henry Ford?" She rapidly switched directions to ask about circumstances surrounding SH's interviews with the police and the prosecutor before circling back around to the assault itself. She then went farther back to the details of SH's first meeting with defendant's brother. The trial court eventually intervened: "You know, I keep hearing this stuff coming from you. It's the same thing over and over."

Defense counsel's strategy of using minimally probative, confusing questions in an attempt to expose minor inconsistences continued throughout the remaining two days of testimony. Defense counsel was questioning the officer-in-charge about the procedural minutiae of who collected what evidence from the crime scene and who sent it for laboratory analysis when the trial court stated, "Counsel, let's move on because we're fishing around now." Upon review of the record, it is readily apparent that "fishing around" was an accurate description of defense counsel's strategy throughout trial.

Defendant's argument on appeal ignores the fact that the trial court's more seemingly-frustrated interjections were proceeded by milder attempts to keep the trial on track. Furthermore, the trial court was equally curt with the prosecutor when the prosecutor attempted to revisit topics that had already been covered. For example:

> *The Court*: Counsel, that has been gone over in [defense counsel's] cross-examination.
>
> * * *
>
> *Ms. Slomski [defense counsel]*: I was just saying I would object as well. Exceeds the scope.
>
> *The Court*: Yeah. You can't go back over all that you didn't go over before now.
>
> *Mr. Champine [prosecutor]*: Judge, I'm not—
>
> *The Court*: Hold it. This is only an opportunity for you to clear up what [defense counsel] brought up, not to go back over other stuff.

Before lunch on the first day of trial, the trial court explained to the jury its duty to control the pace of trial: "See I can't let these lawyers tell me what to do. I got to tell them. Otherwise, we would never get out of here." The trial court also related an anecdote about overhearing two jurors at a previous trial complain about the lawyers talking too much: "And then I explained the process to the jurors. They said, 'Well, then maybe they didn't talk too much.' " The jury was aware that the trial court intended to interject in an occasionally brusque tone to facilitate an efficient, yet thorough, presentation of the case.

Review of the entire record shows that the trial court's interjections were intended to "(1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment." MRE 611(a). The trial court made clear on the first day of trial that it intended to be direct with attorneys in order keep the trial on track. The trial court bluntly interrupted the prosecutor when he attempted to ask questions that the trial court determined to be insignificant or overly cumulative. If defense counsel was subject to disproportionate criticism, it was because defense counsel knowingly and persistently engaged in lines of questioning that were likely to draw a critical response from the trial court. Defendant's argument that he was prejudiced when SH could not remember the name of the next street over from Woodward, and the court stated that it was John R, is meritless because that street name was not material to any issue in this case.

Defendant is not entitled to a new trial because the trial court did not pierce the veil of judicial impartiality. Even if the trial court had pierced the veil of judicial impartiality in this case, the error would have been harmless given the wealth of inculpatory evidence against defendant. Therefore, the trial court did not commit plain error.

Affirmed.

/s/ Christopher M. Murray
/s/ Amy Ronayne Krause
/s/ Jonathan Tukel