

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STACEY SIMEON HALL,

Defendant-Appellant.

UNPUBLISHED

June 25, 2020

No. 348325

Monroe Circuit Court

LC No. 18-244781-FH

Before: TUKEL, P.J., and SERVITTO and BECKERING, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of resisting and obstructing a police officer, MCL 750.81d(1); and making a false report of a medical or other emergency, MCL 750.411a(4)(a). Defendant was originally charged with two counts of resisting and obstructing a police officer, but was acquitted of one count. Defendant was sentenced, as a fourth-offense habitual offender, MCL 769.12, to 365 days in jail and three years' probation for resisting and obstructing a police officer, and 93 days in jail for making a false report of a medical or other emergency. We affirm.

I. FACTUAL SUMMARY

This matter arises from events that occurred on December 21, 2017, in Monroe, Michigan. For approximately 10 years, defendant has lived with his girlfriend, TMH, at TMH's house. Sometime that evening, TMH and defendant got into an altercation. Around 9:30 p.m., TMH called the nonemergency police number because she feared an escalating altercation. The nonemergency police call was as follows:

TMH: My boyfriend is here and he's very, very, very intoxicated and I was married for 30 years to an alcoholic who was like this and he was very abusive and Stacey and I have had problems in the past and usually . . . this is Stacey Hall I'm talking about and it's usually when he's drinking and things like that and I'm starting to get very nervous and I was hoping that you could just send a police officer over here to first, you know he's

Operator: What's . . . What's his name?

TMH: His name is Stacey Hall.

Operator: Okay.

TMH: But I'm afraid he's going to get aggressive.

Operator: And he's intoxicated, causing problems over there?

TMH: Yes.

Operator: Has it been physical or verbal only?

TMH: Verbal.

Operator: Okay. Any weapons that we need to know about?

TMH: Not that I know of.

Operator: Okay.

When Monroe Police Officers Ryan Parise and Shawn Cousino arrived at TMH's home, defendant was throwing a suitcase out onto the front yard. Defendant walked back inside the house and the police officers followed. TMH invited the police officers inside the house. Defendant and the police officers stood in a confined area of the house near the front door.

According to Officer Parise, defendant's attitude, yelling, and hostile behavior indicated that he was intoxicated. Defendant bumped into or touched Officer Parise's hands three times. Officer Parise believed that the first time defendant touched Officer Parise, defendant did so by accident. After the third time defendant touched Officer Parise, it was "obvious" to Officer Parise that defendant did not know "what he was doing or he was doing it intentionally." Defendant became increasingly agitated because the police would not leave the house. Officer Cousino wore a body microphone. The audio recording was as follows:

Officer Parise: What's going on, Mr. Hall?

Defendant: Back up, back up, out the house.

Officer Parise: Hold on. Hang on a minute. This isn't your house.

TMH: You're belligerent.

Defendant: Back up, back 'em up. Back up out the house. Back up out the house.

TMH: No, no, no, no, no, no, no, you're intoxicated and you're scaring me.

Officer Parise: You don't tell me what to do, okay?

Defendant: I'm telling you what to do.

TMH: He's scaring me.

Officer Parise: No, we're gonna talk 'cause she called us, okay?

Defendant: F**k you. Get the f**k out the house.

TMH: He's verbally abusing me and calling me a w***e, calling me a c**t.

Officer Parise: Hold on a sec.

Defendant: I'm getting my stuff out the house. As you know, I stay on the other side of town. Now, get the f**k out.

TMH: I just . . . I just want

Officer Parise: Listen.

Defendant: Get the f**k out the house.

Officer Parise: Just listen.

Defendant: Get the f**k out the house.

Officer Parise: Don't tell me what to do.

Defendant: I'm telling you what to do.

Officer Parise: This isn't your house.

Defendant: You can't tell me shit.

Officer Parise: Okay.

Defendant: I live her.[sic]

Officer Parise: What's going on tonight?

Defendant: I'm moving.

* * *

Defendant: Don't touch me.

Officer Parise: You're the one whose hands touched me, okay. So, that's a problem.

Defendant: The problem is you.

Officer Parise: Listen.

Defendant: What'd I tell you about touching me? Don't touch me.

Officer Parise: You touched me.

Defendant: Man, get the f**k on.

* * *

Defendant: I'm calling 911.

Officer Parise: Great, we are 911. So, now you're misusing 911.

Defendant: No I'm not. Get the f**k outta my house.

Officer Parise: Yes you are right now.

Defendant did, in fact, then call 911. Defendant's 911 call was as follows¹:

Defendant: Get the f**k out my house. That's it, I'm moving. Yeah, my emergency is two officers are in my house. What's your badge number?

Officer Parise: 20333.

Defendant: What's your badge number?

Officer Parise: Listen.

Defendant: Get your hands off me.

Officer Parise: You back up.

Defendant: What's your badge number? What's your badge number? What's your badge number? That's it, get your hands off me.

Officer Parise: Stop.

Defendant: Man, f**k you. Yeah, officer, I got two police officers in my house and they're

Officer Parise: Put the phone down.

Defendant: Get the f**k out my house.

¹ Officer Cousino's microphone also recorded defendant's 911 call.

Officer Parise: Put the phone down.

Defendant: Get the f**k out. Yeah, I got an officer assaulting me at this time.

Officer Parise: . . . You're being detained.

Defendant: Get the f**k off me.

Officer Parise attempted to detain defendant, but defendant pulled away and then put Officer Parise in a headlock. The two men struggled until Officers Parise and Cousino were able to secure defendant in handcuffs.

Shortly after Officers Cousino and Parise handcuffed defendant, Monroe Police Corporal Jason Flora arrived. Corporal Flora was not dispatched to TMH's house, but heard the address over the radio and drove to the house. Corporal Flora recognized the address and realized that defendant was likely involved in the dispute because he had "many" past interactions with him.

Defendant testified on his own behalf. According to defendant, Officer Parise blocked defendant from leaving the house through the front door and twice pushed him closer to the stairway. Defendant called 911 because he believed that Officer Parise assaulted him. Defendant testified that Officer Parise put him in a headlock and repeatedly hit him. Defendant denied ever putting his hands on Officer Parise's neck and resisting the police officers.

II. JURY INSTRUCTIONS

Defendant first argues that he is entitled to a new trial because the trial court failed to instruct the jury on self-defense. We disagree.

To preserve an instructional error for appellate review, a criminal defendant must object to an instruction as given, or request a particular instruction prior to the jury deliberations. *People v Sabin*, 242 Mich App 656, 657; 620 NW2d 19 (2000). MCL 768.29, in relevant part, states that "[t]he failure of the court to instruct on any point of law shall not be ground for setting aside the verdict of the jury unless such instruction is requested by the accused." Defendant did not request a jury instruction on self-defense or object to the trial court's failure to give one sua sponte, and therefore, failed to preserve any challenge regarding the jury instructions. See *People v Gonzalez*, 468 Mich 636, 642; 664 NW2d 159 (2003) (holding that the defendant forfeited any claim of error regarding the jury instructions because the defendant failed to request a cautionary accomplice instruction or object to the trial court's failure to give one sua sponte).²

² The prosecution contends that defendant waived the issue on appeal. A defendant waives a challenge regarding jury instructions by clearly expressing satisfaction with the trial court's reading of the jury instructions. See *People v Kowalski*, 489 Mich 488, 503; 803 NW2d 200 (2011) (concluding that the defendant waived his right to appeal an instructional error because defense counsel expressly affirmed the trial court's jury instructions). Defendant did not waive the issue

This Court reviews unpreserved errors regarding jury instructions for plain error affecting the defendant's substantial rights. *People v Kowalski*, 489 Mich 488, 505; 803 NW2d 200 (2011). Under the plain-error analysis, the defendant must demonstrate "(1) that an error occurred, (2) that the error was plain, and (3) that the plain error affected defendant's substantial rights." *Id.*, citing *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). "The third requirement generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings." *Carines*, 460 Mich at 763. Even if defendant has satisfied all three requirements, "[r]eversal 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 (citation, quotation marks, and alteration omitted).

Although the trial court is not obligated to use the model jury instructions, "[a] criminal defendant is entitled to have a properly instructed jury consider the evidence against him." *People v Riddle*, 467 Mich 116, 124; 649 NW2d 30 (2002). However, the trial court is only required to give a jury instruction when the defendant "requests a jury instruction on a theory or defense that is supported by the evidence." *Id.* (emphasis added). Defendant never requested a jury instruction on self-defense. In fact, defendant filed proposed jury instructions before trial, which did not include an instruction on self-defense. Defendant essentially contends that he is entitled to a new trial because the trial court did not sua sponte give a jury instruction on self-defense.

Defendant's argument on appeal contradicts his trial testimony and fails to recognize the distinction between asserting a claim of self-defense and challenging the lawfulness of an arrest. Defendant contends that he "presented a valid self-defense claim when he testified that Officer Parise did not have a valid basis to detain and then arrest him, which made it necessary for him to act in self-defense to resist an unlawful arrest." Defendant's argument conflates a challenge to the sufficiency of the evidence with the assertion of an affirmative defense.

Self-defense is a common law affirmative defense. See *People v Dupree*, 486 Mich 693, 704; 788 NW2d 399 (2010) (holding that the common law affirmative defense of self-defense was applicable to a charge of being a felon in possession of a firearm). An affirmative defense does not "negate selected elements or facts of the crime;" it "admits the doing of the act charged, but seeks to justify, excuse, or mitigate it." *People v Mette*, 243 Mich App 318, 328-329; 621 NW2d 713 (2000) (citation and quotation marks omitted). Self-defense is also available by statute. MCL 780.972(2), which governs self-defense through force other than deadly force, states, in relevant part:

(2) An individual who has not or is not engaged in the commission of a crime at the time he or she uses force other than deadly force may use force other than deadly force against another individual anywhere he or she has the legal right to be with no duty to retreat if he or she honestly and reasonably believes that the use of that

on appeal because he did not expressly approve of the jury instructions as read by the trial court. As will be discussed further below, defendant did not raise self-defense at trial.

force is necessary to defend himself or herself or another individual from the imminent unlawful use of force by another individual.

A defendant asserting an affirmative defense such as self-defense “must produce some evidence on all elements of the defense before the trial court is required to instruct the jury regarding the affirmative defense.” *People v Guajardo*, 300 Mich App 26, 34-35; 832 NW2d 409 (2013) (citation and quotation marks omitted).

Defendant failed to produce any evidence of a claim of self-defense that would support such a jury instruction. At trial, Officers Parise and Cousino testified that defendant put Officer Parise in a headlock and resisted an arrest. The recording from Officer Cousino’s microphone is also evidence of defendant’s struggle before he was handcuffed. Defendant concedes on appeal that he resisted an arrest, but his trial testimony suggests the opposite. At trial, defendant testified that he did nothing to resist his arrest. When asked whether he resisted Officers Parise’s and Cousino’s efforts to handcuff him, defendant denied any resistance and claimed that he was “getting beat up.” Defendant denied ever pushing Officer Parise or touching Officer Cousino. Thus, defendant never presented a claim of self-defense at trial or produced any evidence that he honestly and reasonably believed that the use of force was necessary. Defendant’s theory of defense was that he did not resist at all. Accordingly, the trial court did not err by failing to give a jury instruction on self-defense because there was no evidence that defendant’s resistance was an act of self-defense.

Although unrecognized by defendant as a distinct legal argument from asserting a claim of self-defense, defendant contends that his resistance was justified because his arrest was unlawful. In *People v Moreno*, 491 Mich 38, 40; 814 NW2d 624 (2012), the Michigan Supreme Court declared that an individual has a right to resist an unlawful arrest for the purposes of MCL 750.81d. In *People v Quinn*, 305 Mich App 484, 492; 853 NW2d 383 (2014), this Court held that “under *Moreno*, as at common law, the prosecution must establish that the officers acted lawfully as an actual element of the crime of resisting or obstructing a police officer under MCL 750.81d.” Thus, the lawfulness of Officer Parise’s and Cousino’s actions is an element of resisting and obstructing a police officer. *Id.* at 494.

The prosecution presented sufficient evidence that Officers Parise and Cousino acted lawfully when they arrested defendant for making a false report of a medical or other emergency. Defendant was arrested for violating MCL 750.411a(4), which states, in relevant part:

A person shall not intentionally make or intentionally cause to be made a false report of a medical or other emergency to a peace officer, police agency of this state or of a local unit of government, firefighter or fire department of this state or a local unit of government of this state, 9-1-1 operator, medical first responder, or any governmental employee or contractor or employee of a contractor who is authorized to receive reports of medical or other emergencies.

Officers Parise and Cousino were lawfully inside TMH’s house because they were invited inside by TMH, the owner of the house. Defendant, agitated with the police officers because they would not leave the house, called 911 and told the operator that he was being assaulted by Officer Parise. However, there was no evidence that defendant was actually assaulted by Officer Parise. Officer

Parise testified that defendant touched him at least three times, perhaps because defendant was intoxicated or because of the confined space where the men were standing. The recording from Officer Cousino's microphone, defendant's 911 call, and TMH's nonemergency call all contradict any reasonable claim that defendant was assaulted by Officer Parise. Therefore, when defendant called 911 and told the operator that he was assaulted by Officer Parise, he violated MCL 750.411a(4) by making a false report of a medical or other emergency in front of two police officers. Under MCL 764.15(1)(a),³ Officer Parise had probable cause to arrest defendant because the crime was committed in his presence. Accordingly, the police officers' conduct was lawful, and defendant did not have a right to resist the arrest.

The trial court properly instructed the jury on the elements of resisting and obstructing a police officer. In this case, the jury was instructed as follows:

The defendant is charged with the crime of assaulting, battering, wounding, resisting, obstructing, opposing a police officer who was performing his duties. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt.

First, that the defendant assaulted, battered, wounded, resisted, obstructed, opposed or endangered a police officer. Obstruct includes use or threatened use of physical interference or force or a knowing failure to comply with a lawful command.

Second, the defendant knew or had reason to know that the person the defendant assaulted, battered, wounded, resisted, obstructed, opposed or endangered was a police officer performing his duties.

Third, that the officer gave the defendant a lawful command, was making a lawful arrest, or was otherwise performing a lawful act. The prosecutor must also prove beyond a reasonable doubt that this crime occurred on or about December 21, 2017[,] in Monroe County, Michigan.

An arrest is legal if it's made by an officer for a crime that cannot be reasonably believed was committed—I'm going to start over on that one. An arrest is legal if it is made by an officer for a crime that he reasonably believed was committed in his presence and if it was made as soon as reasonably possible thereafter. An assault does not have to cause an actual injury.

³ MCL 764.15 states:

(1) A peace officer, without a warrant, may arrest a person in any of the following situations:

(a) A felony, misdemeanor, or ordinance violation is committed in the peace officer's presence.

The trial court's jury instructions were consistent with *Moreno* and fully informed the jury that it must find the police officers' arrest lawful in order to find defendant guilty of MCL 750.81d. Accordingly, defendant fails to demonstrate that the trial court erred in instructing the jury.

III. GREAT WEIGHT OF THE EVIDENCE

Defendant next argues that the jury's verdict was against the great weight of the evidence. We disagree.

This Court reviews a trial court's decision on a defendant's motion for a new trial for an abuse of discretion. *People v Gaines*, 306 Mich App 289, 296; 856 NW2d 222 (2014). "An abuse of discretion occurs when the trial court renders a decision falling outside the range of principled decisions." *People v Rao*, 491 Mich 271, 279; 815 NW2d 105 (2012).

A new trial may be granted on all, or some, of the issues if the verdict is against the great weight of the evidence. MCR 2.611(A)(1)(e); *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998). The relevant inquiry "to determine whether a verdict is against the great weight of the evidence is whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand." *People v Lacalamita*, 286 Mich App 467, 469; 780 NW2d 311 (2009). A verdict is against the great weight of the evidence only when "it was more likely the result of causes outside the record, such as passion, prejudice, sympathy, or some other extraneous influence." *Id.* "[A] trial court may not grant a new trial on the ground that it disbelieves the testimony of witnesses for the prevailing party." *People v Morris*, 314 Mich App 399, 414; 886 NW2d 910 (2016). A new trial is only appropriate if the witness testimony contradicts "indisputable physical facts or laws," is "patently incredible[,]," defies physical realities, is "so inherently implausible that it could not be believed by a reasonable juror," or was "seriously impeached in a case that was marked by uncertainties and discrepancies." *People v Bosca*, 310 Mich App 1, 13; 871 NW2d 307 (2015), application held in abeyance 911 NW2d 465 (Mich, 2018) (citations and quotation marks omitted).

The jury's verdict with respect to defendant's conviction of making a false report of a medical or other emergency was not against the great weight of the evidence. Defendant challenges the jury's verdict on the ground that he did not intentionally make a false report of an emergency when he called 911 because he genuinely believed that he was in danger. However, the evidence does not preponderate so heavily against the jury's verdict that it would be a miscarriage of justice to allow the verdict to stand.

Defendant called 911 to report an assault by Officer Parise even though there is minimal evidence that an assault occurred. Officers Parise's testimony conflicts with defendant's testimony as to which individual initiated contact with the other, but there is no evidence that Officer Parise actually assaulted defendant before defendant called 911. According to Officer Parise, defendant touched him three times before defendant called 911. Defendant points to no other evidence that preponderates against the jury's verdict that defendant intentionally made a false report when he called 911 and stated that he was assaulted by a police officer in his home. The jury heard testimony from defendant, the police officers, and TMH, as well as recordings from Officer Cousino's microphone and TMH's 911 call, which were consistent and contradictory on points. The evidence available to the jury was not so incredible or contradictory that the jury's verdict was

against the great weight of the evidence. Conflicting evidence and the credibility of witnesses are insufficient to warrant a new trial. *Morris*, 314 Mich App at 414.

The jury's verdict with respect to defendant's conviction of resisting and obstructing a police officer was also not against the great weight of the evidence. To be guilty of resisting and obstructing a police officer, the prosecution must prove beyond a reasonable doubt the following elements: " '(1) the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered a police officer, . . . (2) the defendant knew or had reason to know that the person that the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered was a police officer performing his or her duties,'" and (3) that the police officers' actions were lawful. *Quinn*, 305 Mich App at 491 (citation and quotation marks omitted). On appeal, defendant admits that he resisted his arrest, but challenges the jury's verdict on the ground that Officers Parise and Cousino lacked a valid basis to detain or arrest him.

As discussed above, defendant's arrest for violating MCL 750.411a(4) was lawful. TMH called 911 to request the presence of police officers because she was scared that defendant, who was intoxicated, would become aggressive and destructive. When Officers Parise and Cousino arrived at TMH's house, TMH invited them inside. Upon seeing the police officers, defendant became agitated and aggressive with Officers Cousino and Parise. The area where defendant and Officers Parise and Cousino stood was small, which forced the three men to stand very close to each other, and likely heightened the tension inside the house. Defendant testified that it was Officer Parise who touched defendant first, but Officer Parise testified to the opposite. The recording from Officer Cousino's microphone suggests either man could have initiated contact; both defendant and Officer Parise stated that the other was the aggressor. The jury clearly believed Officers Parise's and Cousino's testimonies that defendant touched Officer Parise first and was the aggressor. Therefore, Officers Parise and Cousino had a legitimate, legal basis to arrest defendant once defendant called 911 to report an assault, and defendant lacked any right to resist that arrest. The evidence and testimonies available to the jury were not so contradictory or incredible that the jury's verdict was against the great weight of the evidence. Regardless, contradictory evidence alone would not warrant a new trial. *Morris*, 314 Mich App at 414.

IV. PROSECUTORIAL MISCONDUCT

Defendant next argues that he was denied a fair trial and due process as a result of prosecutorial misconduct. We disagree.

To preserve an issue of prosecutorial misconduct, the defendant must contemporaneously object to the purported misconduct and request a curative instruction. *People v Unger (On Remand)*, 278 Mich App 210, 235; 749 NW2d 272 (2008). Defendant did not object to the prosecutor's allegedly improper statements at trial or request a curative instruction from the trial court, and therefore, we review for plain error affecting defendant's substantial rights. *People v Abraham*, 256 Mich App 265, 274-275; 662 NW2d 836 (2003).

Whether alleged prosecutorial misconduct merits reversal depends on whether the defendant was denied a fair and impartial trial. *People v Dobek*, 274 Mich App 58, 63; 732 NW2d 546 (2007). "Issues of prosecutorial misconduct are decided case by case, and this Court must examine the entire record and evaluate a prosecutor's remarks in context." *Id.* The specific facts

of the case determine the propriety of a prosecutor's remarks, which must be evaluated in light of the defense's arguments, as well as the relationship between the comments and the evidence admitted at trial. *Id.* (citation omitted).

Defendant first challenges the prosecutor's remarks during her opening statement. According to defendant, the prosecutor improperly vouched for the police, enhancing their credibility. Defendant specifically challenges the following remarks:

So, why are we here? First, because it matters. This is your community. This happened in your neighborhoods. These are your neighbors. These are your police officers. It matters because it's not up to me to decide whether this is acceptable behavior in your neighborhood. It's up to you.

* * *

You know, we see and hear stories about police officers all the time. Sometimes they're good. Sometimes they're bad. I'm going to propose to you folks that the officers that you have serving you in this community are excellent officers who behave themselves in an applaudable way and you will hear through testimony and through the audio on the body microphones just exactly how hard these gentlemen worked to try to calm and deescalate the situation before it got completely out of hand.

We find no impropriety in the prosecutor's remarks. The prosecutor did not, as the defendant claims, state that the police officers are "good public servants who should be trusted, and would not commit misconduct by assaulting" defendant. The prosecutor did not vouch for the credibility of the police officers at all; she first explained that the jury's decision was significant because it directly affects the community and then summarized what the evidence would show. A prosecutor vouches for a witness's credibility when she implies that she has "special knowledge" that the witness will testify truthfully. *Id.* at 66. Such was not the case here. Moreover, during opening statements, the prosecutor may inform the jury what facts will be proven at trial and what the prosecutor thinks the evidence will show. *People v Lane*, 308 Mich App 38, 63; 862 NW2d 446 (2014).

Defendant next argues that the prosecutor's remarks during her opening statement about Corporal Flora injected prior bad acts and suggested that defendant was a dangerous person. Defendant challenges the following remarks:

So, why did Corporal Flora head in that direction? Well, the answer is simple. He has had experience at this house before and he anticipated that his partners, his brothers would be in danger if they went over there alone and so on his own, knowing that there were already two officers en route, he turned around and started heading that way.

Although the prosecutor clearly did not introduce prior bad acts of defendant during her opening statement, she seemingly alluded to defendant's past interactions with the police. The trial court ruled that evidence of defendant's eight incidents of domestic disputes between him and TMH were inadmissible at trial. However, the prosecutor did not specifically refer to domestic violence,

a criminal record, or TMH, but vaguely referred to Corporal Flora's experience with defendant and TMH.

Even if the remarks rose to the level of prosecutorial misconduct, defendant is not entitled to relief because any misconduct did not affect defendant's substantial rights by affecting the outcome of his trial. The testimonies of Officers Parise and Cousino, TMH's nonemergency call, and the audio recording of Officer Cousino's body microphone all support the jury's conclusion. Moreover, the trial court instructed the jury that the prosecutor's remarks during her opening statement and closing argument are not evidence and should not be considered evidence. Jurors are presumed to follow the trial court's instructions, "and it is presumed that instructions cure most errors." *People v Mahone*, 294 Mich App 208, 212; 816 NW2d 436 (2011).

Defendant also argues that the prosecutor's questioning of Corporal Flora resulted in the admission of prior bad acts evidence. The prosecutor asked Corporal Flora why he decided to drive to the house even though he was not dispatched there. Corporal Flora responded that he recognized the address and concluded that defendant may be involved. The prosecutor asked Corporal Flora whether he had any "previous professional contact" with defendant in the past, to which Corporal Flora responded that he had "many."

The logic applied to the prosecutor's remarks during her opening statement is the same as her questioning of Corporal Flora. At most, the prosecutor's line of questioning alludes to defendant's prior contacts with the police and other possible domestic disputes involving defendant and TMH. However, the prosecutor did not ask Corporal Flora about the nature of his past encounters with defendant or TMH, or any other details. Regardless, Corporal Flora's testimony would not have resulted in a different outcome at trial in light of the other evidence, specifically the testimonies of Officers Parise and Cousino, at trial. Moreover, defendant was convicted of making a false report of a medical or other emergency and resisting and obstructing a police officer; he was not convicted of a crime involving domestic violence. The reference to defendant's history with the police had no direct correlation to the crimes of which defendant was convicted.

Defendant lastly argues that the prosecutor's characterization of the evidence during her closing argument rose to the level of prosecutorial misconduct that warrants a new trial. Defendant asserts that the prosecutor mischaracterized the nature of the police dispatch as a possible domestic violence situation, rather than "a call to keep the peace and to protect property." Defendant fails to point to a specific remark that mischaracterized the nature of the police dispatch, likely because the prosecutor never mentioned the police dispatch during her closing argument. The prosecutor's closing argument focused on the events that took place after Officers Parise and Cousino arrived at TMH's house. Accordingly, defendant fails to demonstrate that the prosecutor's actions at trial deprived him of a fair and impartial trial.

V. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant argues that he was denied the effective assistance of counsel because defense counsel failed to object to several purported instances of prosecutorial misconduct, the trial court's admission of prior bad acts evidence, and the jury instructions, or to request an instruction on self-defense. We disagree.

This Court reviews claims of ineffective assistance of counsel based on the facts contained in the existing record when no *Ginther*⁴ hearing is held. *People v Jordan*, 275 Mich App 659, 667; 739 NW2d 706 (2007). Whether effective assistance of counsel has been denied is a mixed question of fact and constitutional law. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). This Court reviews questions of constitutional law de novo, and factual findings, if any, are reviewed for clear error. *Jordan*, 275 Mich App at 667.

To establish a claim for ineffective assistance of counsel, a defendant must demonstrate that defense counsel's performance was deficient in that it fell below an objective standard of professional reasonableness, and that there is a reasonable probability that, in the absence of counsel's unprofessional errors, the outcome of the proceedings would have been different. *People v Grant*, 470 Mich 477, 485-486; 684 NW2d 686 (2004) (opinion by KELLY, J.). There is a strong presumption that defense counsel's decisions constitute sound trial strategy. *People v Foster*, 319 Mich App 365, 391; 901 NW2d 127 (2017). Counsel is presumed to be effective, and the defendant bears a heavy burden to demonstrate otherwise. *People v Dixon*, 263 Mich App 393, 396; 688 NW2d 308 (2004).

A. JURY INSTRUCTIONS

Defendant first argues that defense counsel was ineffective by failing to object to the jury instructions or requesting an instruction on self-defense. As discussed above, the evidence presented at trial did not support an instruction on self-defense. Had the defense strategy at trial focused on self-defense, there would have been credible grounds to request an instruction on self-defense. Defendant's own testimony was that he did not resist the police officers in any way, and thus, it would have been illogical to request a jury instruction on self-defense or object to the jury instructions because an instruction on self-defense was omitted. Defense counsel's failure to raise "a meritless argument" or "a futile objection does not constitute ineffective assistance of counsel." *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010). Accordingly, defendant's argument is unpersuasive on this ground.

B. PROSECUTORIAL MISCONDUCT

Defendant next argues that defense counsel was ineffective by failing to object to numerous instances of prosecutorial misconduct. As discussed above, the prosecutor's remarks during her opening statement about the police officers and their role in the community were appropriate. During her closing argument, the prosecutor did not mischaracterize the evidence or even mention the police dispatch. The prosecutor's remarks about Corporal Flora's familiarity with defendant during her opening statement and questioning of Corporal Flora were arguably objectionable and defense counsel could have objected on the ground that the statements and line of questioning alluded to inadmissible evidence. However, defense counsel presumably did not object because the prosecutor's remarks during her opening statement and questioning of Corporal Flora were vague and did not mention defendant's criminal record or domestic violence. Defense counsel may have wished to avoid bringing the jury's attention to defendant's history with the police by objecting, which would have required defense counsel to specify the basis of the objection. This

⁴ *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

Court is prohibited from substituting its judgment for that of defense counsel on matters of trial strategy. *People v Roscoe*, 303 Mich App 633, 644; 846 NW2d 402 (2014). Even assuming that defense counsel's failure to object fell below an objective standard of reasonableness, there is no reasonable probability that an objection would have affected the outcome of defendant's trial in light of TMH's nonemergency call, the recording from Officer Cousino's microphone, and the testimonies of TMH and Officers Parise and Cousino.

C. PRIOR BAD ACTS

Defendant argues that the defense counsel's failure to object to the trial court's admission of prior bad acts evidence at trial deprived him of the effective assistance of counsel. The record does not support the conclusion that the trial court admitted evidence of defendant's prior bad acts. The prosecutor merely mentioned defendant's past interactions with the police. The prosecutor never introduced evidence of defendant's prior bad acts at trial, and so the trial court never admitted it. Again, defense counsel was not ineffective by failing to raise a meritless objection.

Affirmed.

/s/ Jonathan Tukel
/s/ Deborah A. Servitto
/s/ Jane M. Beckering