IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: 2010-AP-30
Lower Court Case No: 2010-MM-1725

CHRISSIE DEMPS,

Appellant,
vs.

STATE OF FLORIDA,

Appellee.
_____________________________/

Appeal from the County Court,
for Orange County, Florida,
Maureen Bell, County Court Judge

Robert Wesley, Public Defender and
Kathleen MacMillan, Assistant Public Defender,
for Appellant

Lawson Lamar, State Attorney and
David H. Margolis, Assistant State Attorney,
for Appellee

Before POWELL, APTE, and ROCHE, J.J.

PER CURIAM.

FINAL ORDER AFFIRMING TRIAL COURT

Appellant Chrissie Demps appeals her conviction for Battery and Disorderly Conduct. We have carefully considered the record on appeal, the briefs, the transcript of the trial, and applicable legal authorities. We dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320, and affirm.

Appellant raises three points, each of which merits brief discussion. In Point I, Appellant argues that the trial court erred in allowing the prosecutor to comment on Appellant's 5th

Amendment right to remain silent by asking Appellant on cross examination whether she had gone to see an attorney before she went to see the detectives after her arrest, and in his closing argument to comment that certain things happened, and "...in the meantime you had went to see an attorney." The fallacy in Appellant's argument is that Appellant never remained silent. She talked to an officer at the scene, and again after her arrest when she voluntarily went to the sheriff's office several days later and gave a written statement. The prosecutor never commented on her right to remain silent.

As to Point II, Appellant claims that the trial court erred in allowing the state to comment on the testimony of state's witnesses where the following occurred.

> [**THE PROSECUTOR]: Q. Okay. So both de -– Deputy Paul and Detective Seifert, when they said that you spoke to the officer first, you're saying that's not what happened?**
>
> **THE WITNESS [Appellant]: A. It's not what happened.**
>
> **MS. ADAMSON: Objection, Your Honor. Improper test -–**
>
> **THE WITNESS: I'm telling you that's not what happened.**
>
> **MS. ADAMSON: Objection, your Honor. She's not testifying to things that are not in -– in -– were not in evidence.**
>
> **THE COURT: Overruled.**

Since Appellant makes an argument here which was not the ground of her objection below, the point is not preserved for appeal. *See Harrell v. State,* 894 So. 2d 935 (Fla. 2005); *Ruano v. State,* 35 So. 3d 1031 (Fla. 3d DCA 2010). Furthermore, even had the point been preserved, we conclude that any error would have been harmless beyond a reasonable doubt. *State v. DiGuilio*, 491 So. 2d 1129 (Fla. 1986). Asking "that's not what happened" is vastly different than asking outright "were the officers lying" and thereby condemning them as purveyors of deliberate

falsehood. Also, this question was asked only one time and the prosecutor did not mention it in her closing argument. It did not become a pervasive feature of the trial.

In Point III, Appellant argues that the court erred in allowing the State to use speaking objections, which amounted to unnecessary, argumentative, prejudicial commentary throughout the trial. In her brief, Appellant points to only two objections made by the prosecutor, which she claims were improper:

> **"Your honor, I'm objecting to relevance and an improper question if she's testifying as to specific medical condition.**
>
> **"Objection. Speculation. I have personal knowledge [sic]."**

We conclude that these objections did not rise to the level of reversible error. *See Michaels v. State*, 773 So. 2d 1230, 1231 (Fla. 3d DCA 2000) defining impermissible speaking objections as those which "**...**constitute nothing less than unauthorized communications with the jury. Such objections characteristically consist of impermissible editorials or comments strategically made by unscrupulous lawyers to influence the jury. They are distinguished from legitimate objections which simply state legal grounds**...**" The first part of each objection was proper because it stated a legal ground. To contend that the second part of each constituted an "editorial" or jury argument is, in colloquial terms, "a reach". For the reasons set forth above, Appellant's conviction is **AFFIRMED.**

DONE AND ORDERED at Orlando, Florida this __2nd___ day of _May______, 2012.

__/S/________________________
ROM W. POWELL
Senior Judge

_/S/_______________________________
ALAN S. APTE
Circuit Judge

_/S/___________________________
RENEE A. ROCHE
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order was furnished to **Kathleen MacMillan, Assistant Public Defender**, 435 N. Orange Avenue, Ste. 400, Orlando, Florida 32801; **Dugald McMillan, Assistant State Attorney,** 415 N. Orange Avenue, Ste. 200, Orlando, Florida 32802-1673; and **Honorable Maureen Bell**, 425 N. Orange Avenue, Orlando, Florida 32801, by mail, this _2nd___ day of __May______________, 2012.

_/S/__________________________________
Judicial Assistant