

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NAIM MUHAMMAD ABDUR-RASHEED,

Defendant-Appellant.

UNPUBLISHED

December 17, 1999

No. 207597

Jackson Circuit Court

LC No. 97-078645 FC

Before: Doctoroff, P.J., and O'Connell and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right from his jury-trial conviction of first-degree premeditated murder, MCL 750.316(1)(a); MSA 28.548(1)(a). Defendant was sentenced to life imprisonment without the possibility of parole. We affirm.

The victim lived with his girlfriend, Latasha Bell, whose sister, Latoya Bell, was angry at the victim for shooting a gun in her presence during an argument. Latoya asked defendant and his uncle to assault the victim for failing to apologize to her. Latoya testified that she saw the victim running, with defendant chasing him with a baseball bat while defendant's uncle stood by. She also testified that defendant later told her that he hit the victim in the head with the bat.

Defendant argues that he was denied a fair trial by various instances of alleged prosecutorial misconduct during closing argument. However, this issue is unpreserved because defendant failed to object to the alleged misconduct at trial. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). We will not review unpreserved claims of prosecutorial misconduct unless the alleged misconduct was so egregious that a curative instruction would not have eliminated its prejudicial effect, or unless failure to review the issue would result in manifest injustice. *People v Launsbury*, 217 Mich App 358, 361; 551 NW2d 460 (1996). The key determination in evaluating claims of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. *People v Bahoda*, 448 Mich 261, 266-267; 531 NW2d 659 (1995).

Defendant argues that it was improper for the prosecutor to inform the jury that prosecution witness Latoya Bell had nothing to gain by testifying against defendant. The prosecutor told the jury that

Latoya had been given no promises or deals in exchange for her testimony and that she would be charged for her role in the murder. After the trial, Latoya was charged with a lesser offense than first-degree murder. Defendant contends that the prosecutor failed to disclose that Latoya reasonably expected that she would be given leniency in exchange for testimony favorable to the prosecution. A prosecutor must disclose any grants of immunity or leniency given to an accomplice or coconspirator in exchange for his or her testimony. *People v Atkins*, 397 Mich 163, 173; 243 NW2d 292 (1976). This duty extends not only to promises of leniency, but also to reasonable expectations of leniency that resulted from contact with the prosecutor. *Id.* However, a prosecutor need not disclose future possibilities of leniency. *Id.* at 174. “The focus of required disclosure is not on factors which may motivate a prosecutor in dealing subsequently with a witness, but rather on facts which may motivate the witness in giving certain testimony.” *Id.* Here, defendant presented no evidence that Latoya was promised or otherwise led to believe that she would be treated leniently if she testified favorably for the prosecution. Merely because she was later charged with a lesser offense does not demonstrate that she had a reasonable expectation of leniency.

Defendant also contends that the prosecutor improperly vouched for Latoya’s credibility, vouched for defendant’s guilt, and mischaracterized the evidence presented. Defendant complains of the prosecutor’s statement that Latoya had nothing to gain by testifying. Although a prosecutor may not vouch for the credibility of a witness nor imply that the prosecutor has some special knowledge that the witness is testifying truthfully, a prosecutor may argue from the facts that the witness is credible. *People v Howard*, 226 Mich App 528, 548; 575 NW2d 16 (1998). Here, the prosecutor did not personally vouch for Latoya’s credibility, but only argued from the facts that she had no reason to lie. This was a proper argument. Defendant also complains of the prosecutor’s comment that all three coconspirators (defendant, defendant’s uncle, and Latoya) were equally guilty. The prosecutor did not personally vouch for defendant’s guilt, but only argued from the facts that defendant was guilty. This was clearly proper. Indeed, the role of any prosecutor during trial includes arguing from the evidence that the defendant is guilty of the charged crime. Also, contrary to defendant’s argument, the prosecutor did not argue facts not in evidence or mischaracterize the evidence presented, but merely argued reasonable inferences from the evidence. *Bahoda, supra* at 282; *People v Fisher*, 220 Mich App 133, 156; 559 NW2d 318 (1996). Defendant was not denied a fair and impartial trial, and we find no manifest injustice in failing to further review this issue.

Defendant also argues that the evidence presented at trial was insufficient to prove his guilt beyond a reasonable doubt, because the evidence did not prove that defendant possessed the specific intent to kill the victim. Defendant maintains that because the evidence only demonstrated that he planned to assault the victim, the killing was not premeditated and deliberate. When reviewing the sufficiency of the evidence presented at trial, we view the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992).

The essential elements of first-degree murder are (1) an intentional killing (2) that was premeditated and deliberate. *People v Marsack*, 231 Mich App 364, 370; 586 NW2d 234 (1998).

“Premeditation and deliberation require sufficient time to allow the defendant to take a second look.” *Id.* at 370-371. However, circumstantial evidence and reasonable inferences drawn from the evidence may be sufficient to prove the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). Factors to consider in determining whether a killing was premeditated include the previous relationship with the victim, the defendant’s actions before and after the killing, and the circumstances of the killing, such as the weapon used and the location of the wounds inflicted. *People v Plummer*, 229 Mich App 293, 300; 581 NW2d 753 (1998).

In this case, the evidence indicated that defendant traveled from Detroit to Jackson specifically to assault the victim, that he discussed killing him and throwing his body in a river, and that he waited for the victim to arrive at his house, chased him, and struck him in the head with a baseball bat, killing him. Defendant’s actions before the crime and the weapon used and wounds inflicted support an inference of premeditation. Viewing this evidence in the light most favorable to the prosecutor, we conclude that a rational trier of fact could find defendant guilty of first-degree murder beyond a reasonable doubt.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Peter D. O’Connell
/s/ Kurtis T. Wilder