

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAYMONT BALDWIN,

Defendant-Appellant.

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UNPUBLISHED  
November 6, 2001

No. 221857  
Wayne Circuit Court  
LC No. 98-007444

Before: Bandstra, C.J., and Doctoroff and White, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of first-degree premeditated murder, MCL 750.316(1)(a), and felony murder, MCL 750.316(1)(b). The trial court sentenced defendant to life imprisonment without parole. We affirm.

I

Defendant first argues that there was insufficient evidence to allow a rational trier of fact to find that it was he who committed the charged killing. We disagree. In reviewing a claim that insufficient evidence was presented to support a conviction, this Court views the evidence de novo in the light most favorable to the prosecutor to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Herndon*, 246 Mich App 371; 415 633 NW2d 376 (2001).

The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict. The scope of review is the same whether the evidence is direct or circumstantial. “Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.” [*Id.*, quoting *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).]

Although much of the evidence in this case consisted of testimony that was at times contradictory, it is the province of the trier of fact to assess credibility. *People v Lemmon*, 456 Mich 625, 636-647; 576 NW2d 129 (1998). That being said, we find that the prosecution presented sufficient evidence to allow a rational trier of fact to conclude that it was defendant who committed the murder.

Despite telling school personnel that he had not seen the victim, Ernestine Johnson, for a period of approximately three months before her murder, defendant admitted during his testimony at trial that he had in fact met with Johnson at the Heritage Inn Hotel on May 12, 1998; only days before her body was found by police in the trunk of her burned out car. At the time she was found, Johnson, who had been strangled to death, was wrapped in a blanket that was later identified as one stolen from the room occupied by defendant at the Heritage Inn on May 12, 1998. There was also evidence that the fire that had burned Johnson's vehicle was deliberately set by dousing the interior with gasoline, and that defendant had, early in the morning on the day after Johnson's disappearance, gone to the home of his girlfriend to wash his shoes and clothes, which were nonetheless found to have gasoline on them. In addition, several people who saw defendant after Johnson's car had been found testified that defendant's face had been burned and that he had shaved off his goatee. Moreover, on the day after Johnson disappeared, defendant and his girlfriend pawned jewelry belonging to Johnson.

In addition to the foregoing evidence, defendant later attempted to evade arrest by ramming an law enforcement vehicle and then fleeing on foot. See *People v Adams*, 430 Mich 679, 693; 425 NW2d 437 (1988) (flight is circumstantial evidence showing consciousness of guilt). Viewing the evidence in the light most favorable to the prosecution, we find that a rational trier of fact could find that it was defendant who killed Johnson.

## II

Defendant next argues that the trial court erred in permitting the prosecutor to present rebuttal evidence regarding the specific room occupied by defendant at the Heritage Inn on May 12, 1998. Specifically, defendant asserts that because this evidence could have been offered in the prosecutor's case-in-chief, the evidence was inadmissible on rebuttal. We disagree. "Admission of rebuttal evidence is within the sound discretion of the trial judge and will not be disturbed absent a clear abuse of discretion." *People v Figgures*, 451 Mich 390, 398; 547 NW2d 673 (1996).

In, *Figgures*, *supra*, our Supreme Court held that the prosecutor properly impeached the defendant by bringing forth evidence on rebuttal indicating that the defendant had a history of harassing the complainant, his ex-wife, when the evidence directly impeached the defendant's claim that he was reconciling with her. In doing so, the Court stated:

Rebuttal evidence is admissible to "contradict, repel, explain or disprove evidence produced by the other party and tending directly to weaken or impeach the same." The question whether rebuttal is proper depends on what proofs the defendant introduced and not on merely what the defendant testified about on cross-examination.

Contrary to the dissent's insinuation, the test of whether rebuttal evidence was properly admitted is not whether the evidence could have been offered in the prosecutor's case in chief, but, rather, whether the evidence is properly responsive to evidence introduced or a theory developed by the defendant. As long as evidence is responsive to material presented by the defense, it is properly classified as rebuttal, even if it overlaps evidence admitted in the prosecutor's case in chief. [*Id.* at 399 (Citations omitted).]

Here, the prosecution offered in its case-in-chief testimony from the hotel manager that defendant had moved from room 241 to room 104 (the room from which the blanket found wrapping Johnson's body was stolen). On direct and cross-examination, defendant denied having moved to room 104. In rebuttal, the prosecution offered the testimony of the hotel clerk who was on duty when defendant changed rooms, as well as that of the hotel manager regarding business records indicating that room 241 was re-rented that night to a different customer. Unlike the circumstances found in the cases cited by defendant, the fact addressed by the rebuttal testimony was relevant to a material issue that had been raised in the prosecution's case-in-chief; i.e., the origins of the blanket in which the victim's body was wrapped and defendant's connection to that item. Given defendant's subsequent denial of that connection, the trial court did not err in permitting rebuttal testimony to directly impeach defendant's testimony. See *People v Pesquera*, 244 Mich App 305, 314; 625 NW2d 407 (2001).

### III

Defendant next argues that the prosecutor made a number of improper statements to the jury that denied him due process and a fair trial. Generally, this Court reviews claims of prosecutorial misconduct on a case by case basis, examining the remarks in context to determine whether the defendant received a fair and impartial trial. *People v Bahoda*, 448 Mich 261, 266-267; 531 NW2d 659 (1995). However, where, as here, a defendant fails to object to an alleged prosecutorial impropriety, the issue is reviewed for plain error. *Carines, supra* at 752-753, 764; *People v Schutte*, 240 Mich App 713, 720; 613 NW2d 370 (2000). Therefore, to avoid forfeiture of this issue, defendant must demonstrate plain error that affected his substantial rights, i.e., that affected the outcome of the proceedings. *Carines, supra* at 763-764; *Schutte, supra*. We find no such error on this record.

In challenging the prosecutor's conduct at trial, defendant first argues that the prosecutor improperly argued facts not in evidence during closing argument. However, although a prosecutor may not make a statement of fact to the jury that is unsupported by the evidence, he is nonetheless free to argue the evidence and all reasonable inferences arising from it as they relate to the theory of the case. *Bahoda, supra* at 282. Here, it is clear from a reading of the lower court record that contrary to defendant's assertion, the prosecutor, in making the challenged statements, did not misstate or mischaracterize the evidence. Rather, the prosecutor argued the evidence and all reasonable inferences arising from it as they related to the prosecution's theory of the case. Therefore, the challenged statements do not constitute plain error that affected the defendant's substantial rights.

We similarly reject defendant's claim that the prosecutor improperly expressed a personal opinion as to the defendant's credibility. A prosecutor may argue from the facts that the defendant or another witness is not worthy of belief. *People v Launsbury*, 217 Mich App 358, 361; 551 NW2d 460 (1996). In this case, the prosecutor's remarks about defendant's credibility were not improper given the evidence presented at trial indicating that defendant lied to the police, his employer, on his tax forms, and when asked about the last time he had seen Johnson.

Defendant further argues that the prosecutor improperly shifted the burden of proof when he stated: "Where is this girl that drove him around? Where is this woman that gave him the jewelry? Where is the chain that Ernestine allegedly bought him? Where is the pager? Where are these things?" Again we find no error affecting defendant's substantial rights. A prosecutor

may comment on a defendant's failure to call witnesses to corroborate his version of the events. *People v Fields*, 450 Mich 94, 104-116; 538 NW2d 356 (1995). Arguing that a witness or evidence does not exist attacks the credibility of the theory presented and does not shift the burden of proof. *Id.*

Defendant also argues that the prosecutor improperly made a statement of personal knowledge when he informed that jury he knew defendant's Air Jordans "are not cheap tennis shoes." In context, the purpose of the statement was to show that defendant, who did not usually put his leather tennis shoes in the washing machine, did so in this case because he was more concerned with cleaning the incriminating gasoline from them than with preserving their appearance. There was testimony presented to show that washing his shoes was not something defendant had ever done before and that the shoes may have had gasoline on them. Thus, we find the challenged statement to be permissible argument based on facts presented at trial. Defendant has therefore failed in his burden of establishing plain error affecting his substantial rights.

#### IV

Defendant next argues that he was denied the effective assistance of counsel as a result of his trial counsel's failure to object to the prosecutor's allegedly improper statements during closing argument. Again, we disagree. As discussed above, the challenged remarks were proper argument based on the facts presented at trial. Therefore, defense counsel's failure to object did not fall below an objective standard of reasonableness, nor was defendant so prejudiced that he was deprived of a fair trial. See *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000); see also *People v Fike*, 228 Mich App 178, 182; 577 NW2d 903 (1998) ("trial counsel cannot be faulted for failing to raise an objection or motion that would have been futile.").

We affirm.

/s/ Richard A. Bandstra  
/s/ Martin M. Doctoroff  
/s/ Helene N. White