

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC HARRIS,

Defendant-Appellant.

UNPUBLISHED

January 18, 2002

No. 224938

Wayne Circuit Court

LC No. 99-006418

Before: Saad, P.J., and Sawyer and O’Connell, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of second-degree murder, MCL 750.317. The trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to a term of fifteen to thirty years’ imprisonment. We affirm.

Defendant argues that the prosecutor improperly vouched for the credibility of two witnesses during closing argument. Because defendant did not object to the challenged remarks at trial, we review this issue for plain error affecting defendant’s substantial rights. *People v Carines*, 460 Mich 750, 761-764, 774; 597 NW2d 130 (1999). Reversal is warranted “only when the defendant is actually innocent or the error seriously affected the fairness, integrity, or public reputation of judicial proceedings independent of the defendant’s innocence.” *Id.* at 774.

Considered in context, the prosecutor’s remarks do not indicate that he improperly vouched for the credibility of the witnesses. Rather, the prosecutor merely asserted that the evidence showed that the witnesses had no motive to lie. The prosecutor did not suggest that he believed the witnesses to be credible; he simply stated that no evidence showed an animosity between the witnesses and defendant and that no evidence showed the witnesses had an interest in the outcome of the trial. Accordingly, defendant has failed to demonstrate a plain error affecting his substantial rights.

Defendant also claims that the prosecutor improperly shifted the burden of proof. However, because defendant fails to identify which remarks he alleges are improper, we deem this issue abandoned.

We also reject defendant’s claim that the prosecutor improperly denigrated defense counsel during his rebuttal argument.

A prosecutor may not question the veracity of defense counsel or otherwise suggest that defense counsel is intentionally trying to mislead the jury. *People v Dalessandro*, 165 Mich App 569, 580; 419 NW2d 609 (1988). Here, the prosecutor argued that defense counsel's suggestion about what may have happened to the victim following the assault after he left the bar was a "red herring." While the prosecutor's reference to a "red herring" may have suggested that defense counsel was trying to obscure the truth, the remark did not constitute a personal attack of defense counsel or shift "the jury's focus from the evidence to defense counsel's personality." *People v Phillips*, 217 Mich App 489, 498; 552 NW2d 487 (1996). The prosecutor merely argued that the facts did not support an inference that some intervening event could have caused the victim's death. Moreover, were we to find that the prosecutor's remarks improperly denigrated defense counsel, defendant has failed to show that the error affected the outcome of the trial or otherwise affected his substantial rights.

Defendant further argues that the trial court erred in denying his motion for a directed verdict. Defendant maintains that the evidence did not show that he caused the victim's death and, instead, showed that the victim died from a subsequent fall or failure to seek medical attention after the assault.

"When reviewing a trial court's decision on a motion for a directed verdict, this Court reviews the record de novo to determine whether the evidence presented by the prosecutor, viewed in the light most favorable to the prosecutor, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt." *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001). "Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime." *People v Crawford*, 232 Mich App 608, 616; 591 NW2d 669 (1998).

Here, sufficient evidence established defendant's guilt. One witness testified that the victim said he fell. However, ample eyewitness testimony established that defendant hit the victim seven or eight times with a steel-framed chair. Further, according to the medical examiner, the victim died from multiple blunt force trauma to the head and his injuries were consistent with those that would be caused by an assault with a chair. Viewing the evidence in a light most favorably to the prosecution, defendant's acts caused the victim's death and the prosecution proved the essential elements of second-degree murder beyond a reasonable doubt.

We also reject defendant's claim that he was wrongly convicted because the victim's own failure to seek medical attention contributed to his death. "The determination of proximate cause or of the existence of an independent intervening cause is an issue to be determined by a properly instructed jury." *People v Webb*, 163 Mich App 462, 464-465; 415 NW2d 9 (1987). "The concept of an intervening cause is predicated upon foreseeability." *Id.* at 465. As our Court observed in *Webb*, "[a] person's negligence in refusing medical treatment is foreseeable." *Id.* Similarly, we hold that, under the facts of this case, the victim's failure to seek medical attention was foreseeable and, as in *Webb*, "defendant cannot expect to exonerate himself from criminal liability merely by arguing that the decedent's negligence was an intervening cause." *Id.*

Affirmed.

/s/ Henry William Saad

/s/ David H. Sawyer

/s/ Peter D. O'Connell