

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CEDRIC HARRIS,

Defendant-Appellant.

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UNPUBLISHED

January 29, 2004

No. 243045

Wayne Circuit Court

LC No. 01-010889

Before: Smolenski, P.J. and Saad and Kelly, JJ.

PER CURIAM.

Before trial, defendant pleaded guilty to felon in possession of a firearm, MCL 750.224f. Following a jury trial, defendant was convicted of first-degree murder, MCL 750.316, and possession of a firearm during the commission of a felony (“felony-firearm”), MCL 750.227b. He was sentenced to life in prison without the possibility of parole for the first-degree murder conviction, two years in prison for the felony-firearm conviction, and 2 ½ to 5 years in prison for the felon in possession of a firearm. Defendant appeals as of right and we affirm.

I. Prosecutorial Misconduct

Defendant first argues that he was denied a fair trial because of several improper comments made by the prosecutor in closing argument. We disagree.

This Court reviews preserved claims of prosecutorial misconduct de novo to determine whether the alleged prosecutorial misconduct denied defendant a fair and impartial trial, *People v Pfaffle*, 246 Mich App 282, 288; 632 NW2d 162 (2001), but reviews unpreserved claims of prosecutorial misconduct for plain error affecting defendant's substantial rights. *People v Schutte*, 240 Mich App 713, 720; 613 NW2d 370 (2000), citing *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Defendant first takes issue with the prosecution’s characterization of the killing as an “execution,” and defendant as an “executioner.” The prosecution is free to argue the evidence and all reasonable inferences arising from it as it relates to the prosecutor’s theory of the case. *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995). “[P]rosecutors may use ‘hard language’ when it is supported by evidence and are not required to phrase arguments in the blandest of all possible terms.” *People v Ullah*, 216 Mich App 669, 678-679; 550 NW2d 568 (1996). Here, the victim was shot eight times while he was sitting quietly preparing a marijuana

cigarette. On appeal, defendant concedes that the jury was entitled to draw an inference from the evidence that the killing was an execution. We find no error.

Defendant further contends the prosecution improperly “testified” regarding the victim’s mental state without evidence to that effect. Here, a reasonable jury could infer from the evidence presented that, rather than dwelling on the previous conflict between the victim and defendant, the victim had chosen to put the incident behind him. The prosecutor’s arguments regarding the victim’s mental state were a fair comment on the evidence.

Defendant next argues that the prosecution improperly inflamed the passions of the jurors. A prosecutor may not intentionally inject inflammatory arguments with no apparent justification except to arouse prejudice. *Bahoda, supra* at 266. But, as noted above, the prosecution is not required to limit its arguments to “the blandest of all possible terms.” *Ullah, supra* at 678-679. Upon review of the record, the prosecutor’s remarks taken as a whole and in context, constituted a proper argument that the evidence showed that defendant had not acted in self-defense, and as such, was guilty of murder.

Defendant further contends the prosecution misstated the law regarding self-defense. While uncorrected misstatements of the law by a prosecutor can deprive a defendant of a fair trial, *People v Abraham*, 256 Mich App 265, 275; 662 NW2d 836 (2003), the trial court correctly instructed the jury on self-defense and jurors are presumed to follow instructions. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998).

## II. Supplemental Jury Instructions

### A. First-Degree Murder

Defendant argues that the trial court erred when the jury requested a list of the elements of first-degree murder and the trial court failed to ascertain what part of the original instructions the jury did not understand, and further erred in simply rereading the original instructions. We disagree.

We review instructional issues de novo. *People v Hall*, 249 Mich App 262, 269; 643 NW2d 253 (2002). But we review unpreserved instructional issues for plain error affecting substantial rights. *People v Knox*, 256 Mich App 175, 181; 662 NW2d 370 (2003) citing *People v Carines*, 460 Mich 750, 761-763; 597 NW2d 130 (1999).

During deliberations, the jury sent a note to the trial court requesting “a list of the elements of the charge.” The court recalled the jury and reread the instructions for first-degree murder. Jury instructions “must include all elements of the charged offense and must not exclude material issues, defenses, and theories, if there is evidence to support them.” *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000). The trial court did not err in giving the requested supplemental instruction regarding first-degree murder.

### B. Self-Defense

Defendant also argues that the trial court erred when it refused to give a supplemental instruction on self-defense at defendant’s request. The trial court reasoned that it was not required to do so because the jury had not asked for it. A trial court is only required to give

supplemental instructions specifically requested by the jury. *People v Katt*, 248 Mich App 282, 311; 639 NW2d 815 (2001). Therefore, the trial court properly denied defendant's request.

### III. Final Jury Instructions

Defendant raises two issues of instructional error in the final jury instructions. But where a party expresses satisfaction with the instructions given the jury by the trial court, any issues of instructional error are waived. *People v Carter*, 462 Mich 206, 213-215; 612 NW2d 144 (2000). Here the trial court, after giving final jury instructions, asked the parties "[a]re you satisfied with the instructions as given?" to which defense counsel replied "[y]es, we are, your Honor." Where an issue is waived, any error is "extinguished" and review by this Court is precluded. *Id.* at 215-216.

Affirmed.

/s/ Michael R. Smolenski  
/s/ Henry William Saad  
/s/ Kirsten Frank Kelly