

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT LEWIS ROLAND,

Defendant-Appellant.

UNPUBLISHED

May 10, 2005

No. 251805

Ingham Circuit Court

LC No. 03-000398-FH

Before: Bandstra, P.J., and Fitzgerald and Meter, JJ.

PER CURIAM.

Defendant was convicted by a jury of breaking and entering, MCL 750.110, and he was sentenced to eighteen months' to ten years' imprisonment. This case stems from a break-in that occurred at the Greater Love Temple Church. A camcorder was stolen from the pastor's office. Defendant appeals as of right, and we affirm.

Defendant first argues that the prosecution presented insufficient evidence for a rational trier of fact to find beyond a reasonable doubt that defendant committed the charged crime. Specifically, defendant asserts that the prosecution has failed to prove that defendant was the person who committed this crime. We disagree. In reviewing the sufficiency of the evidence, this Court views the evidence de novo in the light most favorable to the prosecution and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). All conflicts in the evidence are resolved in favor of the prosecution. *People v Herbert*, 444 Mich 466, 474; 511 NW2d 654 (1993), overruled on different grounds *People v Lemmon*, 465 Mich 625 (1998). Circumstantial evidence and the reasonable inferences that arise from the evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). Questions of credibility and intent should be left to the trier of fact to resolve. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999).

At trial, the prosecution introduced a substantial amount of evidence indicating that defendant was the perpetrator of the break-in with which he was charged. Two eyewitnesses testified that they saw defendant standing near the church holding the camcorder. This was soon after one of the men heard a noise in the church basement and saw a flashlight beam shine on a wall. When he was spotted outside, defendant made a threatening remark and then rode off on a bicycle with the camcorder. The two men followed defendant, who eventually dropped the camcorder in a yard. The camcorder was subsequently recovered by police. Taking all of this

evidence in the light most favorable to the prosecution, and bearing in mind that circumstantial evidence and the reasonable inferences arising from the evidence can constitute satisfactory proof, we conclude that the prosecution presented evidence sufficient to justify a rational trier of fact in finding that defendant committed the crime with which he was charged beyond a reasonable doubt.

Defendant also argues that the prosecutor denied him his constitutional right to a fair trial when he made certain statements in his rebuttal argument that shifted the burden of proof to defendant. Again, we disagree. Because defendant did not preserve this issue, review is under the test set forth in *Carines, supra* at 763, which requires that for relief to be possible there must have been plain error that affected substantial rights. Moreover, in the context of alleged prosecutorial misconduct, generally reversal is not required where a curative instruction could have alleviated any prejudicial effect resulting from prosecutorial misconduct. *People v Callon*, 256 Mich App 312, 329-330; 662 NW2d 501.

Prosecutorial-misconduct issues are decided on a case-by-case basis, and the reviewing court must examine the pertinent portion of the record and evaluate a prosecutor's remarks in context. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001). A prosecutor may not comment on a defendant's failure to testify or present evidence. *People v Abraham*, 256 Mich App 265, 273; 662 NW2d 836 (2003). However, "a prosecutor's argument that inculpatory evidence is undisputed does not constitute improper comment." *Callon, supra* at 331. Moreover, otherwise improper prosecutorial remarks might not require reversal if they address issues raised by defense counsel. *People v Jones*, 468 Mich 345, 353; 662 NW2d 376 (2003).

In the present case, the prosecutor's challenged remarks simply argued that the inculpatory evidence identifying defendant as the perpetrator of the charged crime was undisputed. Moreover, defendant's sole defense was that the prosecution had not presented sufficient evidence to prove beyond a reasonable doubt that it was defendant who committed the charged crime. As a result, the prosecutor's statements were responsive to the issues raised by defense counsel in his closing argument. Furthermore, the trial court instructed the jury that defendant was not required to present any evidence at trial, that attorney statements did not constitute evidence, that a defendant is presumed innocent and that the prosecution must prove each element of the charged crime beyond a reasonable doubt. Accordingly, defendant has failed to establish plain error affecting substantial rights.

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter