

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARCUS DEJSHUN HURSEY,

Defendant-Appellant.

UNPUBLISHED

July 24, 2008

No. 279001

Ingham Circuit Court

LC No. 06-000323-FC

Before: Saad, C.J., and Fort Hood and Borrello, JJ.

MEMORANDUM.

Defendant appeals as of right following his jury trial convictions for assault with intent to do great bodily harm less than murder (AGBH), MCL 750.84, and assault with intent to murder (AWIM), MCL 750.83. Defendant was sentenced as a fourth habitual offender, MCL 769.12, to 180 to 300 months' imprisonment for the AGBH conviction and 225 to 480 months' imprisonment for the AWIM conviction. We affirm.

Defendant first argues that the evidence was insufficient to support his convictions. Specifically, defendant maintains that he acted in self-defense and that the prosecutor failed to offer sufficient evidence to rebut his theory. We disagree. Defendant admits that he went to the home in order to buy crack cocaine from one of the victims. He contends that the victim made a sexual advance and that when defendant told the victim that he was a man, the victim went into a rage and attacked defendant. Once a defendant introduces evidence of self-defense, the prosecutor bears the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense. *People v Fortson*, 202 Mich App 13, 20; 507 NW2d 763 (1993). It was the prosecution's theory that defendant went to the home in order to procure crack, but he did not have money to make a purchase and the victim refused to grant him credit. Defendant then waited for the victim to fall asleep on the couch and attacked him in order to steal the drugs and whatever money the victim may have had. The issue involved an assessment of credibility, which was a matter for the jury to decide. The jury was free to believe the victim's testimony and dismiss defendant's self-serving testimony. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1201 (1992); *People v Fletcher*, 260 Mich App 531, 561; 679 NW2d 127 (2004).

Defendant next argues that various instances of prosecutorial misconduct denied him a fair trial. Defendant failed to preserve the issue for appeal because he did not object to any of the instances of alleged misconduct. *People v Callon*, 256 Mich App 312, 329; 662 NW2d 501

(2003). Thus, appellate review is for plain, outcome-determinative error. *Id.* Nevertheless, this Court has considered defendant's arguments, and we find them to be without merit. The prosecutor did not act improperly during voir dire. The prosecutor did not compare defendant to Jeffrey Dahmer or the individual who killed Jon Benet Ramsey. Instead, the prosecutor simply explained that it was not her legal obligation to provide a motive for the crime. In addition, any implication that the prosecutor made that defendant may have destroyed evidence was moot where defendant admitted that he stabbed the victims and hid the gun in a beer box at the convenience store. Finally, the prosecutor's questions during defendant's cross-examination were not objectionable, nor did they impermissibly shift the burden of proof. A prosecutor may comment on the failure of the defense to produce evidence on which it relies. *People v McGhee*, 268 Mich App 600, 634; 709 NW2d 595 (2005).

Affirmed.

/s/ Henry William Saad

/s/ Karen M. Fort Hood

/s/ Stephen L. Borrello