

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THADDEUS MARCELL WILLIAMS,

Defendant-Appellant.

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UNPUBLISHED

November 20, 2008

No. 279713

Wayne Circuit Court

LC No. 07-007377-01

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THADDEUS MARCELL WILLIAMS,

Defendant-Appellant.

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No. 279974

Wayne Circuit Court

LC No. 02-010627-01

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Before: Jansen, P.J., and O’Connell and Owens, JJ.

PER CURIAM.

In LC No. 07-007377-01, defendant was convicted by a jury of second-degree murder, MCL 750.317, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a firearm, MCL 750.227b. Immediately after the jury trial, the trial court found defendant guilty of violating his probation for a prior conviction of carrying a concealed weapon (“CCW”), MCL 750.227, in LC No. 02-010627-01. Defendant was sentenced as a third habitual offender, MCL 769.11, to concurrent prison terms of 30 to 50 years for the murder conviction and two to ten years for the felon-in-possession conviction, to be served consecutive to a two-year term of imprisonment for the felony-firearm conviction. The trial court also sentenced defendant to a concurrent prison term of one to five years in the probation violation case. In Docket No. 279713, defendant appeals as of right his convictions in LC No. 07-007377-01. In Docket No. 279974, defendant appeals as of right the order revoking his probation in LC No. 02-010627-01. We affirm.

## I. Docket No. 279713

Defendant was convicted of the second-degree murder of Rufus Marshall while he and Marshall were visiting an apartment in Detroit on March 16, 2007. Defendant and Marshall got into an argument about a rivalry between two neighborhoods in Detroit, and also about a debt owed to defendant. Defendant challenged Marshall to “knuckle it up,” and Marshall placed two telephone calls asking someone to bring him his gun. Both men left the apartment and went into the hallway, where Marshall was fatally shot in the chest. Defendant contended that Marshall produced a gun during the confrontation in the hallway, and that the gun discharged when defendant grabbed Marshall in an attempt to disarm him. The prosecutor maintained that the physical evidence and other circumstances surrounding the shooting refuted defendant’s claim of self-defense.

### A. Defendant’s Motion for a Mistrial

Defendant argues that the trial court erred in denying his motion for a mistrial after the prosecutor questioned him on cross-examination regarding his prior possession of a gun. We disagree.

We review a trial court’s decision on a motion for a mistrial for an abuse of discretion. *People v Bauder*, 269 Mich App 174, 194; 712 NW2d 506 (2005). A motion for a mistrial should be granted only where the irregularity prejudices the defendant’s rights and impairs his ability to receive a fair trial. *Id.* at 195.

In response to the prosecutor’s questioning, defendant denied habitually carrying a gun and stated that he only carried a gun while on his porch. After defendant objected, the trial court agreed that defendant’s prior CCW conviction, and evidence of his prior possession of a gun, was not admissible for impeachment under MRE 609, or as evidence of habit under MRE 406. Accordingly, the trial court sustained defendant’s objection, precluded further questioning on the subject, and instructed the jury to disregard the question and testimony regarding whether defendant carried a gun on another occasion. However, the court denied defendant’s motion for a mistrial.

The trial court did not abuse its discretion in denying defendant’s motion for a mistrial. Although defendant contends that the prosecutor’s questioning was aimed at eliciting that he was previously convicted of CCW, the only information that was disclosed to the jury was that defendant previously possessed a gun while he was on his porch on some unspecified occasion. Defendant’s prior CCW conviction was not revealed. The trial court promptly instructed the jury to disregard this information. Jurors are presumed to follow their instructions, and instructions are presumed to cure most errors. *People v Abraham*, 256 Mich App 265, 279; 662 NW2d 836 (2003). The matter here was adequately addressed by a curative instruction. Accordingly, a mistrial was not warranted. *People v Stewart*, 199 Mich App 199, 200; 500 NW2d 756 (1993).

## B. Defendant's Standard 4 Brief

Defendant argues that the trial court erred in denying his motion for a directed verdict with respect to the charges of first- and second-degree murder and that there was insufficient evidence to refute his claim of self-defense. We disagree.

We review this issue to determine whether the evidence presented by the prosecutor, viewed in a light most favorable to the prosecution, could persuade a rational trier of fact to find that the essential elements of the crimes charged were proved beyond a reasonable doubt. *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001). Furthermore, when a defendant challenges the sufficiency of the evidence in a criminal case, this Court considers whether the evidence, viewed in a light most favorable to the prosecution, would warrant a reasonable juror to find guilt beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000); *People v Sexton*, 250 Mich App 211, 222; 646 NW2d 875 (2002).

In order to convict a defendant of first-degree premeditated murder, the prosecution must prove that the defendant intentionally killed the victim and that the killing was premeditated and deliberate. *People v Marsack*, 231 Mich App 364, 370; 586 NW2d 234 (1998). Premeditation and deliberation require sufficient time to allow the defendant to take a second look. *Id.* at 370-371. Circumstantial evidence and reasonable inferences drawn from the evidence may constitute satisfactory proof of the elements of the crime. *Id.* The elements of second-degree murder are: (1) a death, (2) caused by the defendant's act, (3) with malice, and (4) without justification. *People v Mendoza*, 468 Mich 527, 534; 664 NW2d 685 (2003).

A defendant asserting self-defense to homicide must introduce evidence that he honestly and reasonably believed that his life was in imminent danger or that there was a threat of serious bodily harm. *People v James*, 267 Mich App 675, 677; 705 NW2d 724 (2005). Once a defendant introduces evidence of self-defense, the prosecutor bears the burden of disproving it beyond a reasonable doubt. *Id.*

Initially, we note that the jury acquitted defendant of first-degree murder. In any event, there was sufficient evidence to support the first-degree murder charge. From the testimony presented at trial, the jury reasonably could have inferred that defendant enticed Marshall to leave the apartment with the intent to shoot him without witnesses present. Accordingly, the trial court properly denied defendant's motion for a directed verdict with respect to the first-degree murder charge.

Defendant's self-defense theory was predicated on his claim that Marshall was armed with a gun. However, none of the prosecution witnesses observed Marshall with a gun, or observed a gun at the scene after Marshall was shot. No other witness was able to corroborate defendant's testimony that Marshall produced or was armed with a gun. A circular injury on Marshall's head suggested that he was deliberately and directly hit on the head with a gun, which would not be consistent with defendant's version of events. Also, evidence that Marshall's drug use caused him to behave erratically and aggressively did not prove that he was armed. In sum, there was sufficient evidence to enable the jury to find beyond a reasonable doubt that defendant did not act in self-defense, but rather deliberately shot Marshall. Therefore, defendant properly was convicted of second-degree murder.

Next, defendant argues that both the trial court and the prosecutor made remarks that prejudiced the jury against him and deprived him of a fair trial. We disagree.

Defendant objected to the prosecutor's argument that the evidence did not show that Marshall was "acting crazy," thereby preserving that issue, but failed to preserve his remaining claims of error with appropriate objections at trial. We review defendant's unpreserved claims of error for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Defendant must establish: (1) that an error occurred, (2) that the error was plain, i.e., clear or obvious, and (3) that the error affected his substantial rights, i.e., affected the outcome. *People v Jones*, 468 Mich 345, 355; 662 NW2d 376 (2003). We review defendant's preserved claim of misconduct by examining the pertinent portion of the record and evaluating the prosecutor's remarks in context to determine whether defendant was denied a fair trial. *People v Rodriguez*, 251 Mich App 10, 30; 650 NW2d 96 (2002).

A criminal defendant is entitled to a neutral and detached magistrate. *People v Cheeks*, 216 Mich App 470, 480; 549 NW2d 584 (1996). The test to determine whether a judge's comments or conduct pierced the veil of judicial impartiality is whether the comments or conduct may well have unjustifiably aroused suspicion in the mind of the jury as to a witness's credibility and whether partiality quite possibly could have influenced the jury to the defendant's detriment. *People v Conyers*, 194 Mich App 395, 404; 487 NW2d 787 (1992); *People v Moore*, 161 Mich App 615, 617; 411 NW2d 797 (1987).

Defendant argues that he was prejudiced when the trial court asked the prospective jurors during voir dire if they could attain justice for Marshall and his family irrespective of evidence that Marshall was involved in drug dealing. This question was not aimed at arousing the jurors' sympathy or eliciting bias against defendant, but to ascertain whether the jurors could fairly decide the case based on the evidence, irrespective of unsavory aspects of the victim's character. There was no plain error.

We also find no merit to defendant's argument that the trial court pressured the jury into returning a verdict by the end of the third day of trial. In the context of discussing the day's schedule, the trial court merely stated that the jury would deliberate until 3:50 p.m. that day. The court never suggested that 3:50 p.m. was a deadline for returning a verdict. Thus, there was no plain error.

Next, the prosecutor did not improperly express his opinion regarding defendant's guilt by arguing that defendant's explanation for the shooting was not believable. A prosecutor may not express personal opinions regarding a defendant's guilt, but may argue from the facts that a witness is credible or that the defendant or another witness is not worthy of belief. *People v Matuszak*, 263 Mich App 42, 56; 687 NW2d 342 (2004); *People v Howard*, 226 Mich App 528, 548; 575 NW2d 16 (1997). A prosecutor has wide latitude in arguing the facts and reasonable inferences, and is "free to argue all reasonable inferences from [the evidence] as they relate to his or her theory of the case." *People v Dobek*, 274 Mich App 58, 66; 732 NW2d 546 (2007). The prosecutor's argument fell within these parameters. He was not expressing a personal opinion regarding defendant's guilt or credibility, but properly commenting that defendant's explanation was inconsistent with the physical evidence presented at trial.

We also find harmless any error with respect to defendant's preserved claim that the prosecutor improperly stated that none of the witnesses testified that Marshall was "crazy" *because of drug usage*. Prosecutors may not make a statement of fact to the jury that is unsupported by the evidence, but they are free to argue the evidence and all reasonable inferences arising from it as they relate to their theory of the case. *People v Bahoda*, 448 Mich 261, 289; 531 NW2d 659 (1995). The prosecutor's argument was directed at the weakness of defendant's theory that Marshall was under the influence of drugs that caused him to become dangerously agitated and aggressive. The prosecutor's argument was supported by the evidence, because the medical examiner gave only general information regarding the effects of methamphetamine and Ecstasy on a user's behavior, and there was no testimony that Marshall was engaged in extreme behavior *caused by drugs* rather than "ordinary" aggressive behavior. Kenneth Douglas's testimony that Marshall was "acting crazy" was too general to establish a link between drug usage and Marshall's behavior. Moreover, the question whether Marshall was exhibiting an extreme degree of abnormal behavior brought on by drug abuse, or whether his antagonism was within a "normal" range or "normal" for his personality was a subjective matter of degree. The word "crazy" has no clinical or specific meaning, and could refer to losing one's temper over a trivial matter, or to behavior that would cause severe alarm or fear, or anything in between. The prosecutor's argument was that the evidence failed to establish defendant's allegations about Marshall's drug use and its effect on him, notwithstanding the use of the word "crazy"

In any event, the prosecutor's assertion that none of the witnesses testified that Marshall was "crazy" because of drug usage, when in fact a witness did say that Marshall was "acting crazy" was harmless error. MCR 2.613(A) provides:

(A) An error in the admission or the exclusion of evidence, an error in a ruling or order, or an error or defect in anything done or omitted by the court or by the parties is not ground for granting a new trial, for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take this action appears to the court inconsistent with substantial justice.

This is consistent with the Supreme Court's authority to regulate practice and procedure, and merely means that appellate courts should not reverse a conviction unless the error was prejudicial. *People v Mateo*, 453 Mich 203, 210, 212; 551 NW2d 891 (1996). The jury heard multiple witnesses testify about Marshall's behavior and it heard defendant's argument that Marshall was under the influence of drugs. Therefore, the prosecutor's statement was not prejudicial and was not grounds for reversal.

Defendant also argues that the trial court erroneously failed to instruct the jury on the defense of accident, and gave a deficient manslaughter instruction. However, defense counsel's affirmative approval of the trial court's jury instructions waived any claim of error. *People v Carter*, 462 Mich 206, 216; 612 NW2d 144 (2000).

## II. Docket No. 279974

Defendant argues that the trial court improperly revoked his probation in LC No. 02-010627-01 by using the trial in LC No. 07-007377-01 to establish a factual basis for its finding that he violated his probation rather than conduct a separate hearing. We disagree.

Defendant argues that this procedure violated his constitutional right to be heard and present witnesses and evidence. Because defendant never objected or challenged the procedure used by the trial court, this issue is not preserved. Therefore, our review is limited to plain error affecting defendant's substantial rights. *People v Pipes*, 475 Mich 267, 274; 715 NW2d 290 (2006).

MCL 771.4 provides, in pertinent part:

All probation orders are revocable in any manner the court that imposed probation considers applicable either for a violation or attempted violation of a probation condition or for any other type of antisocial conduct or action on the probationer's part for which the court determines that revocation is proper in the public interest. Hearings on the revocation shall be summary and informal and not subject to the rules of evidence or of pleadings applicable in criminal trials.

As this Court explained in *People v Pillar*, 233 Mich App 267, 269; 590 NW2d 622 (1998):

The scope of these proceedings is limited and the full panoply of constitutional rights applicable in a criminal trial do not attach. . . . However, probationers are afforded certain due process at violation hearings because of the potential for loss of liberty. . . . Specifically, a probationer has the right to a procedure consisting of (1) a factual determination that the probationer is in fact guilty of violating probation, and (2) a discretionary determination of whether the violation warrants revocation. [Citations omitted.]

MCR 6.445 governs probation violation hearings. MCR 6.445(C) states that "[i]f the alleged violation is based on a criminal offense that is a basis for a separate criminal prosecution, the court may postpone the hearing for the outcome of that prosecution." MCR 6.445(E) provides that the probationer has the right to present evidence and to examine and cross-examine witnesses at the violation hearing. The state has the burden of proving a violation by a preponderance of the evidence. *Id.* MCR 6.445 does not require the trial court to hold a probation hearing separate from the trial if the alleged violation is the basis of a separate criminal prosecution.

In essence, the trial court merged the probation violation hearing and the trial of defendant's other criminal matter, at which defendant was permitted to present evidence and cross-examine witnesses. This is consistent with the trial court's wide discretion in determining how the hearing will be conducted. MCL 771.4. We find no plain error in this procedure. See *People v Laurent*, 171 Mich App 503, 506; 431 NW2d 202 (1988) (holding that the trial court properly exercised its discretion in using the defendant's ethnic intimidation trial as a factual basis for a probation violation).

Affirmed.

/s/ Kathleen Jansen  
/s/ Peter D. O'Connell  
/s/ Donald S. Owens