

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAHAAB LOUIS CHILDS,

Defendant-Appellant.

UNPUBLISHED
September 14, 2010

No. 291878
Wayne Circuit Court
LC No. 08-016236-FC

Before: OWENS, P.J., and WHITBECK and FORT HOOD, JJ.

PER CURIAM.

Defendant Rahaab Childs appeals by right his jury trial convictions of second-degree murder,¹ felon in possession of a firearm,² and possession of a firearm during the commission of a felony.³ The trial court sentenced Childs as a fourth habitual offender⁴ to concurrent terms of 28 to 45 years' imprisonment for the second-degree murder conviction and 3 to 45 years' imprisonment for the felon in possession of a firearm conviction, to run consecutive to 2 years' imprisonment for the felony-firearm conviction. We affirm.

I. BASIC FACTS

This case arises out of the shooting death of Nathaniel Ford on August 6, 2008. The medical examiner who performed Nathaniel Ford's autopsy testified that his death was a homicide resulting from a single gunshot wound to the head. The medical examiner could not determine with certainty whether the gun discharged intentionally or as a result of a struggle over the firearm. In the medical examiner's opinion, the shooter did not fire from close range because she found no traces of gunpowder residue on Nathaniel Ford's skin.

Childs worked as a store clerk at the Battles Family Convenience Store and lived in an apartment connected to the store. Childs knew the Ford brothers, who were members of the One Hundred Family Boys, which Childs described as a neighborhood gang. Childs testified that the

¹ MCL 750.317.

² MCL 750.224f.

³ MCL 750.227b.

⁴ MCL 769.12.

gang robs, steals, and sells crack cocaine. Childs caught gang members stealing from the convenience store, and the gang wanted to make the store part of their turf for gang business. Nathaniel Ford told Childs that he wanted to sell marijuana at the store and that he was going to direct his customers there, to which Childs objected.

In early August 2008, Childs, along with Nathaniel Ford, Travis Ford, and Perry Williams, gathered at a house to rap, drink, and smoke marijuana. At one point, Travis Ford and Childs engaged in a rap battle, during which Travis Ford used the word “bitch” in a playful manner directed at Childs. Travis Ford did not believe that Childs took offense to the word. Williams, however, testified that Childs did take offense to the word and that Nathaniel Ford told Travis Ford to stop rapping for that reason. Childs testified that being called a “bitch” did not make him angry or crazy and that the shooting had nothing to do with the rap battle. According to Childs, the shooting was about turf, drugs, and power.

Travis Ford testified that he saw Childs two days later when he rode to the convenience store on his bike to try to sell him a coat. Childs told Travis Ford that he was broke. When Travis Ford approached the store, the door was locked. At that point, Travis Ford turned around and Childs attacked him. Childs hit Travis Ford in the face eight or nine times. Childs continued to hit and kick Travis Ford after he fell to the ground. Travis Ford lost consciousness for approximately one minute. When Travis Ford regained consciousness, Childs told him that he knew that Travis Ford was going to get his “people.” Childs then called Travis Ford a “bitch” and warned him not to come back to the store.

Childs, on the other hand, testified that his disagreements with Travis Ford began when he caught Travis Ford and one of Travis Ford’s brothers stealing chips from the store. From then on, Travis Ford referred to Childs as a “bitch.” Some time later, Travis Ford approached Childs on a bike. According to Childs, Travis Ford put the kickstand down and said, “What up, bitch.” Travis Ford pulled out what looked like a small caliber .22 or .25 handgun. At that point, Childs punched Travis Ford in the face, causing Travis Ford to fall off his bike and lose consciousness. Childs took the gun from Travis Ford and discovered that it was not loaded. Then he wiped the gun off and put it back in Travis Ford’s hand. When Travis Ford regained consciousness, he told Childs that he was going to tell his brothers and took off on his bike.

After the incident, Travis Ford called his mother, Wanda Ford. When Wanda Ford arrived at Travis Ford’s location, she discovered that his face was swollen and some teeth were chipped. Travis Ford told Wanda Ford that Childs “just beat his ass” after he tried to sell Childs a coat.

Travis Ford encountered Childs on his way back to the store later that day. An unknown man accompanied Childs.⁵ According to Travis Ford, Childs pointed a gun at Travis Ford and

⁵ Travis Ford referred to this unknown man as Childs’s brother. Childs, however, testified that he does not have a brother. After defense counsel objected to the use of the term “brother” as lacking foundation, Travis Ford clarified that he knew that the man was not Childs’s brother, but that Childs held the man out to be his brother. To avoid confusion, we refer to this individual simply as the unknown man.

threatened to kill him. Travis Ford asked Childs if it was that serious. Childs responded, "I'm not a bitch; I'm a murderer."

On the same day, Wanda Ford went to the convenience store to talk to Childs about what had happened to Travis Ford. Wanda Ford's sons Ford-Dorsey and Nathaniel Ford accompanied her. Childs told Wanda Ford that he was tired of "these young guys" disrespecting him and calling him a "bitch." Childs did not mention that Travis Ford had tried to rob him. According to Wanda Ford, Childs appeared angry and said three times, "I'm not a bitch; I'm a murderer." During their conversation, Childs stood behind the register with a gun placed on the counter. Childs never picked up the gun. When Wanda Ford asked him if he planned to murder her son, he answered, "no," explaining that her sons were like brothers to him.

Childs, on the other hand, denied that he said, "I'm not a bitch; I'm a murderer." Rather, Childs claimed that he told Wanda Ford that she needed to talk to Travis Ford because he was calling everyone a "bitch."

On a later occasion, Travis Ford argued with two young women at a different convenience store about Childs attacking him. Nathaniel Ford and the unknown man were also present. Travis Ford threw items off the shelves at the two women and the unknown man. Nathaniel Ford pulled Travis Ford back and ultimately stopped the fight. Once outside the store, the two women told Travis Ford and Nathaniel Ford that they were "two dead niggers walking." The unknown man told Travis Ford, "we got you." Nathaniel Ford then said, "you all got a beef with my brother, you got a beef with me." At that point, Ford-Dorsey pulled up in a vehicle and took Travis Ford home. Nathaniel Ford stayed behind. Travis Ford received a phone call ten minutes later informing him that somebody had shot Nathaniel Ford.

Montino Hightower described the events differently. Hightower testified that he was also at the store when Travis Ford started to act wild and throw items at the two women. After the argument, Hightower, Nathaniel Ford, and Travis Ford went to a house, where they consumed alcohol for approximately 30 minutes. Travis Ford left the house at some point. Thereafter, Hightower and Nathaniel Ford were walking through an alley when Childs pulled up in a vehicle. The unknown man was sitting in the passenger seat. Both Childs and the unknown man jumped out with handguns. Hightower looked back at Nathaniel Ford as he was running away. Hightower heard Nathaniel Ford tell Childs that he had nothing to do with anything. Childs then fired three shots at Nathaniel Ford, who fell to the ground.

According to Childs, the shooting occurred after five people tried to rob him. Both at trial and in a statement to the police, Childs claimed that, on the night of the incident, he closed his convenience store at approximately 9:00 p.m., took a shower in his apartment, and started walking toward another convenience store. On his way, Travis Ford, Nathaniel Ford, Hightower, and two other men, all with guns, emerged from an alley and asked Childs for his keys to the store. Travis Ford had an AK-47, Nathaniel Ford had a handgun, and Hightower had an assault rifle with a scope on it. Travis Ford said, "There that bitch right there." Travis Ford told Childs to empty his pockets. Childs threw the contents of his pockets on the ground. Childs explained to the men that he did not have the keys to the store. The men then directed Childs toward a van at the end of the alley. Hightower held the assault rifle to Childs's left side as they walked. Childs grabbed the rifle and turned it to a 90-degree angle, at which point the gun went off and shot Nathaniel Ford in the head. According to Childs, he was not carrying a gun that evening.

After the incident, Childs ran home, told his kids that they had to leave, buried his dad's gun, and bought a one-way Greyhound ticket to Atlantic City. Childs did not report the incident to the police because he thought that no one would believe his story. Police officers arrested Childs three days after he returned from Atlantic City. At that time, Childs was carrying his father's gun, which he had dug up. Childs did not indicate in his statement to the police that he had a disagreement with Nathaniel Ford or the other men in the alley. He did not mention feeling disrespected or being called a "bitch" during a rap battle. Childs also never mentioned an argument in the store involving Travis Ford and two women.

Williams, a cousin of the Ford brothers and Childs's friend, testified that Childs called him at approximately 10:00 p.m. on the night of the shooting and told him that Travis Ford had gotten into a fight at the store and that he was going around the corner to fight Travis Ford. In another conversation, Childs told Williams that he was leaving town. In yet another conversation, after Williams had heard that Nathaniel Ford had been killed, Williams asked Childs if he had shot Nathaniel Ford. Childs said that he had, which is why he had to leave town. In a final conversation, Childs threatened to kill Williams and everybody who knew Nathaniel Ford.

Childs denied that Williams asked him if he had killed Nathaniel Ford. According to Childs, he never spoke with Williams after Nathaniel Ford's death. Childs also described that every day after work, Williams drove Childs to a store to buy items for his kids that were not sold at his store. In exchange, Childs either bought Williams beer, gave him \$5, or gas money. On the night of the incident, however, Williams did not drive Childs to the store. Instead, Childs walked to the store. In retrospect, Childs believed that the gang set him up and that Williams was involved. Further, Childs testified that the unknown man does not exist because Childs does not have a brother. According to Childs, the story is "all made up." Childs denied that he intentionally, willfully, or with premeditation killed Nathaniel Ford. He further claimed that he was not so angry and crazy because he felt disrespected that he would shoot someone. Childs now appeals.

II. SUFFICIENCY OF THE EVIDENCE

A. STANDARD OF REVIEW

Childs argues that the trial court erred when it submitted the first-degree murder charge to the jury without sufficient evidence of premeditation and deliberation and that his conviction of second-degree murder was an improper compromise verdict requiring reversal.

Childs failed to preserve his challenge to the trial court's submission of the first-degree murder charge to the jury by moving for a directed verdict with respect to this charge below.⁶ This Court reviews unpreserved challenges for plain error affecting substantial rights.⁷ To avoid forfeiture under the plain error rule, a defendant must show (1) that an error occurred; (2) that the

⁶ See *People v Brown*, 279 Mich App 116, 136; 755 NW2d 664 (2008).

⁷ *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

error was plain—that is, clear or obvious; and (3) that it affected substantial rights—that is, the error affected the outcome of the proceedings.⁸

B. LEGAL STANDARDS

The elements of premeditation and deliberation distinguish first-degree murder from second-degree murder.⁹ “To premeditate is to think about beforehand; to deliberate is to measure and evaluate the major facets of a choice or problem.”¹⁰ Although the requisite time interval between intent and ultimate action vary, the window must be sufficient to provide a reasonable person enough time to give his ensuing response a second look.¹¹ Direct evidence of premeditation and deliberation is not necessary.¹² Rather, the jury may infer that a defendant had the requisite state of mind so long as the record provides adequate basis.¹³ A trial court may submit an issue to the jury when the evidence presented at trial, viewed in the light most favorable to the prosecution, is sufficient to justify a rational trier of fact in finding the defendant guilty beyond a reasonable doubt.¹⁴

C. APPLYING THE STANDARDS

This case boiled down to a credibility contest. In such circumstance, “the question of credibility ordinarily should be left for the factfinder.”¹⁵ Childs’s version of events placed him in an alley where five armed men unexpectedly tried to rob him. According to Childs, when he pulled the rifle away from his body in an act of self-defense, it accidentally discharged, killing Nathaniel Ford. Other testimony, however, revealed that Childs and an unknown man pulled up in a vehicle, the men jumped out with guns, and Childs shot Nathaniel Ford, who was struck and fell to the ground. The trial court properly left to the jury the task of deciding which of the competing theories to believe.

In addition, the evidence presented would permit a rational trier of fact to conclude that Childs shot Nathaniel Ford with premeditation and deliberation. First, Nathaniel Ford belonged to a local gang, and Childs had been aware for some time that the gang planned to use his convenience store to conduct gang business. Childs objected to the gang’s use of his store. Further, at least some evidence suggested that Childs took offense to Travis Ford calling him a “bitch” in a rap battle several days before the shooting and that, on a separate occasion, Childs threatened to kill Travis Ford. Finally, testimony indicated that Childs repeatedly described

⁸ *Id.*

⁹ *People v Hoffmeister*, 394 Mich 155, 158; 229 NW2d 305 (1975).

¹⁰ *People v Morrin*, 31 Mich App 301, 329; 187 NW2d 434 (1971).

¹¹ *Id.* at 330.

¹² *Hoffmeister*, 394 Mich at 158.

¹³ *Id.* at 159.

¹⁴ *People v Jolly*, 442 Mich 458, 466-467; 502 NW2d 177 (1993).

¹⁵ *People v Lemmon*, 456 Mich 625, 642-643; 576 NW2d 129 (1998).

himself to others as a murderer. This evidence, viewed in the light most favorable to the prosecution, would allow a rational trier of fact to infer that Nathaniel Ford's killing was part of a preconceived plan. Accordingly, the trial court did not err in submitting the first-degree murder charge to the jury.

Childs further argues that the fact that the jury convicted him of the lesser-included offense of second-degree murder does not render harmless the trial court's erroneous submission of the first-degree murder charge. Where a trial court erroneously submits a charge to the jury without sufficient evidentiary support, conviction of a lesser-included offense does not lead automatically to a conclusion of harmless error.¹⁶ Rather, reversal is appropriate where sufficiently persuasive indicia of jury compromise are present.¹⁷ Because the trial court properly submitted the first-degree murder charge to the jury, however, Childs's second-degree murder conviction did not constitute an improper compromise verdict requiring reversal. Childs has failed to establish plain error.¹⁸

III. PROSECUTORIAL MISCONDUCT

A. STANDARD OF REVIEW

Childs argues that the prosecutor's misconduct during closing argument by asking the jury to "bring some sense of justice" and vouching for a key prosecution witness warrants a new trial. This Court reviews unpreserved claims of prosecutorial misconduct for plain error.¹⁹ Reversal is inappropriate unless the "error resulted in the conviction of an actually innocent defendant or seriously affected the fairness, integrity, or public reputation of judicial proceedings" and "a curative instruction could not have alleviated any prejudicial effect."²⁰

B. ANALYSIS

Childs contends that the prosecutor made a civic duty argument that warrants reversal. The great latitude given to prosecutors allows them to argue the evidence and all reasonable inferences derived from that evidence as it relates to their theory of the case.²¹ Prosecutors may not, however, "resort to civic duty arguments that appeal to the fears and prejudices of jury members."²² "[A] prosecutor's comments must be read as a whole and evaluated in light of defense arguments and the relationship they bear to the evidence admitted at trial."²³

¹⁶ *People v Graves*, 458 Mich 476, 487-488; 581 NW2d 229 (1998).

¹⁷ *Id.*

¹⁸ *Carines*, 460 Mich at 763.

¹⁹ *People v Callon*, 256 Mich App 312, 329; 662 NW2d 501 (2003).

²⁰ *Id.* at 329-330.

²¹ *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995).

²² *Id.*

²³ *Callon*, 256 Mich App at 330.

In *People v Williams*,²⁴ the defendant challenged the prosecutor's comment to the jury members that they have an opportunity to affect the drug traffic problem in their city. This Court stated that emotional reactions to social problems should play no role in a jury's evaluation of a defendant's guilt or innocence.²⁵ This Court reversed the defendant's conviction because the prosecutor's appeal encouraged the jury "to go outside the evidence and decide the case on the basis of their desire to alleviate the drug problem."²⁶

On the other hand, in *People v Bahoda*,²⁷ the prosecutor's reference to the drug problem did not amount to an impermissible civic duty argument. The Michigan Supreme Court found that the prosecution merely commented on evidence admitted at trial when it referenced the size of the drug organization, the amount and value of the contraband, and the various drug transactions.²⁸ "[T]he prosecutor was not 'injecting issues broader than the guilt or innocence of the accused under the controlling law,' but was rather asking the jury to convict on the basis of evidence produced at trial."²⁹ The Court found that, in any event, the prosecutor's commentary did not amount to error requiring reversal, noting that had defense counsel perceived any impropriety, he should have objected and sought an appropriate instruction.³⁰

Here, as in *Bahoda*, the prosecutor's remarks did not constitute a civic duty argument. The prosecutor stated:

And, ladies and gentlemen, your verdict when you come back, you can't bring [Nathaniel Ford] back. You can't restore him to his family, but what you can do, what you can do is use the evidence and the facts that you heard from that witness stand. Use it together with the law the Judge gives you, instructs you on and at the very least bring some sense of justice to [Nathaniel Ford's] death. Thank you.

We must evaluate the challenged portion, "bring some sense of justice," in the context of the entire statement. When viewed as a whole, it is clear that the prosecutor was not asking the jury to look beyond Childs's guilt or innocence. Rather, and quite the opposite, the prosecutor told the jury to "use the evidence and the facts . . . together with the law." The "justice" to which the prosecutor referred is a decision having basis in law and fact. The prosecutor perhaps poorly chose his words, but their effect was not to inflame the jury's emotions or lead them to consider societal ills. Moreover, the prosecutor's appeal was far too vague to give the jury a sense that they should consider a particular social problem, such as the "war on drugs" to which the

²⁴ *People v Williams*, 65 Mich App 753, 755; 238 NW2d 186 (1975).

²⁵ *Id.* at 756.

²⁶ *Id.*

²⁷ *Bahoda*, 448 Mich at 283-284.

²⁸ *Id.* at 284.

²⁹ *Id.* at 284-285.

³⁰ *Id.*

prosecutor in *Williams* referred. We might reach a different conclusion had the prosecutor commented specifically on gang violence, for example.

Childs also challenges the prosecutor's statement to the jury that a key prosecution witness "told you the truth." Prosecutors may vouch for witnesses' credibility so long as they do not imply that they have special knowledge or support their voucher with the authority or prestige of the prosecutor's office.³¹

In *People v Smith*,³² this Court found error requiring reversal where the prosecutor argued that the prosecutor's office would never have offered the witness a plea bargain if the witness had perpetrated the crime. The prosecutor bolstered the witness's credibility by stating that the prosecutor's office and the police engage in a careful investigation of murder charges before cutting deals.³³

By contrast, in *People v Thomas*,³⁴ this Court found that the prosecutor did not imply that he had any special knowledge when he indicated to the jury that a police officer who testified had no reason to lie. "A prosecutor may comment on his own witnesses' credibility during closing argument, especially when there is conflicting evidence and the question of the defendant's guilt depends on which witnesses the jury believes."³⁵ The prosecutor merely explained to the jury that lying under oath would cost the officer his job and that the evidence indicated that the police properly obtained a search warrant, which simply responded to the defendant's argument that the police had conspired against him.³⁶

Here, the prosecution's statement vouching for a key witness's credibility did not amount to prosecutorial misconduct. The prosecutor stated in closing argument:

[The witness] told you the truth about what happened. He told you about the reason why [Childs] has all this anger in him, why he has a reason to want to have a better reputation in the neighborhood. He tells you, yeah, [Childs] told me that he's tired of everybody calling me a bitch. He's tired of that.

He's so upset by this that he tells [the witness] about it and you heard [Childs] testify just now this afternoon that he's never done anything to [the witness] that would cause [the witness] to come here and lie to you.

³¹ *Id.* at 276; *People v Smith*, 158 Mich App 220, 232; 405 NW2d 156 (1987).

³² *Smith*, 158 Mich App at 231-232.

³³ *Id.* at 232.

³⁴ *People v Thomas*, 260 Mich App 450, 455; 678 NW2d 631 (2004).

³⁵ *Id.* at 455.

³⁶ *Id.*

What reason does [the witness] have to lie? He's [d]efendant's friend. He's also a cousin of the [victim's] family, but he's a friend of [d]efendant. He doesn't have any reason to come and lie to you.

As in *Thomas*, the prosecutor here merely explained to the jury that the witness had no reason to lie given his friendship with Childs, which is evidenced in the record. The prosecutor also established that the witness had knowledge regarding Childs's state of mind because the witness associated and conversed with Childs before the shooting, an argument again based on evidence in the record. The prosecutor did not imply that he had special, extra-record knowledge that the witness testified truthfully, nor did he use the prestige of the prosecutor's office to bolster the witness's credibility. The prosecutor's commentary was therefore entirely proper, particularly considering that this case boiled down to a credibility contest.

In sum, neither of the prosecutor's challenged remarks constituted prosecutorial misconduct, and Childs has not shown plain error requiring reversal.

We affirm.

/s/ Donald S. Owens
/s/ William C. Whitbeck
/s/ Karen Fort Hood