

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
January 10, 2012

v

CHANCHEZ DEZARAY STEWART,
Defendant-Appellant.

No. 300476
Wayne Circuit Court
LC No. 10-003925-FC

Before: MURRAY, P.J., and TALBOT and SERVITTO, JJ.

PER CURIAM.

Chanchez Dezaray Stewart appeals as of right his jury trial convictions of first-degree felony murder¹ and possession of a firearm during the commission of a felony (“felony-firearm”).² Stewart was sentenced to serve consecutive sentences of two years’ imprisonment with 200 days credit for the felony-firearm conviction and life imprisonment for the first-degree felony murder conviction. We affirm.

Desmond Kaigler contacted LaTanya Norman regarding purchasing two to three pounds of marijuana for Tyler Binkley and Michael Spahr. Norman then contacted Stewart, her ex-boyfriend, regarding the purchase and he agreed to make the sale. On June 6, 2009, Spahr and Binkley drove from Ohio to Michigan to purchase the marijuana. Once in Michigan, Binkley and Spahr picked up Kaigler and Norman. Norman then contacted Stewart who told her to meet him at an address on Irvington Street in Detroit. Once at the designated location, Norman exited the vehicle and called Stewart to tell him that they had arrived. Shortly thereafter, the vehicle was approached by three men, two of whom were armed with guns. The armed men demanded money from the vehicle’s occupants and then began shooting. Spahr was killed during the incident and Binkley was shot several times.

¹ MCL 750.316(b).

² MCL 750.227b.

On appeal, Stewart contends that there was insufficient evidence to support his conviction for felony murder on the theory that he aided and abetted the armed robbery.³ We disagree. No special action is required to preserve challenges to a conviction based on sufficiency of the evidence.⁴ A court reviewing the sufficiency of the evidence “must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.”⁵ “Circumstantial evidence and reasonable inferences arising therefrom can constitute satisfactory proof of the elements of a crime.”⁶

The elements of felony murder are: (1) the killing of a human being, (2) with the intent to kill, to do great bodily harm, or to create a very high risk of death or great bodily harm with knowledge that death or great bodily harm was the probable result [i.e., malice], (3) while committing, attempting to commit, or assisting in the commission of any of the felonies specifically enumerated in [the statute, including armed robbery].⁷

A defendant is guilty of armed robbery if “in the course of committing a larceny . . . [the individual] uses force or violence against any person who is present, or [assaults] or puts the person in fear”⁸ while “possess[ing] a dangerous weapon or an article used or fashioned in a manner to lead any person present to reasonably believe the article is a dangerous weapon[.]”⁹ “[T]he crime of armed robbery . . . also encompasses attempts to commit that offense.”¹⁰

Conviction of a defendant under an aiding and abetting theory requires the prosecution to prove that:

(1) the crime charged was committed by the defendant or some other person, (2) the defendant performed acts or gave encouragement that assisted the commission of the crime, and (3) the defendant intended the commission of the crime or had

³ Stewart inaccurately asserts that he was convicted of felony murder under an aiding and abetting theory. The prosecution advanced both a principal and an aiding and abetting theory for felony murder, but no specific finding was requested of or made by the jury when it rendered its verdict.

⁴ *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001).

⁵ *People v Hunter*, 466 Mich 1, 6; 643 NW2d 218 (2002).

⁶ *People v Reddick*, 187 Mich App 547, 551; 468 NW2d 278 (1991).

⁷ *People v Carines*, 460 Mich 750, 758-759; 597 NW2d 130 (1999) (citation omitted).

⁸ MCL 750.530; See also *People v Williams*, 288 Mich App 67, 73; 792 NW2d 384 (2010).

⁹ MCL 750.529; See also *Williams*, 288 Mich App at 73.

¹⁰ *Id.* at 74.

knowledge that the principal intended its commission at the time he gave aid and encouragement.¹¹

It is undisputed that Spahr was killed during the commission of an armed robbery. We find that there was sufficient evidence presented to support Stewart's felony murder conviction under the theories that he was either a principal or an aider and abettor in the armed robbery. The evidence demonstrates that three men, two of whom were armed, approached Spahr's vehicle and demanded money. The armed men then began shooting at the vehicle's occupants and Norman identified Stewart as one of the shooters. Thus, the evidence supports that Stewart committed the armed robbery.

It can also be inferred from the evidence that Stewart assisted the commission of the armed robbery.¹² Stewart agreed to sell marijuana to Binkely and Spahr and advised Norman that he would meet them on Irvington Street. During the drive to Irvington Street, Norman spoke with Stewart two to three times. When the four arrived at the designated location, Norman exited the vehicle and used Kaigler's cellular telephone to call Stewart and tell him that they had arrived. While they were on the telephone, Norman saw Stewart outside and Stewart told her that he would be there in a couple of minutes. Shortly thereafter, three men approached Spahr's vehicle. Two of the men were armed with guns and demanded that they be given "the money." The men then began shooting and evidence was presented that one of the shooters was Stewart's friend. As such, there was sufficient evidence to support Stewart's conviction for felony murder as an aider and abettor in the armed robbery.¹³

Stewart argues that there is no evidence that he was one of the shooters. Stewart's assertion lacks merit as it ignores Norman's statement to police made shortly after the shooting identifying Stewart as a shooter, which was admitted at trial as substantive evidence.

Next, Stewart asserts that there was insufficient evidence to support his felony-firearm conviction.¹⁴ We disagree. A person is guilty of felony-firearm if he "carries or has in [his] possession a firearm when [he] commits or attempts to commit a felony[.]"¹⁵

There was evidence presented that Norman identified Stewart as one of the shooters. Thus, the evidence supports that Stewart was in possession of a firearm. As explained above, the evidence also demonstrates that Norman possessed the firearm while committing an armed

¹¹ *Carines*, 460 Mich at 768.

¹² *Reddick*, 187 Mich App at 551.

¹³ *Hunter*, 466 Mich at 6.

¹⁴ Stewart inaccurately contends that he was convicted of felony-firearm under an aiding and abetting theory. The jury was instructed on both a principal and an aiding and abetting theory for felony-firearm, but no specific finding was requested of or made by the jury when it rendered its verdict.

¹⁵ MCL 750.227b(1).

robbery. Therefore, viewing the evidence in the light most favorable to the prosecution there was sufficient evidence to support Stewart's felony-firearm conviction.¹⁶

Stewart also contends that he was denied a fair trial when the prosecutor mischaracterized witness testimony and improperly asserted his personal beliefs regarding Stewart's guilt. We disagree. We review unpreserved claims of prosecutorial misconduct for plain error affecting Stewart's substantial rights.¹⁷ "Reversal is warranted only when plain error resulted in the conviction of an actually innocent defendant or seriously affected the fairness, integrity, or public reputation of judicial proceedings."¹⁸

"[T]he test for prosecutorial misconduct is whether a defendant was denied a fair and impartial trial."¹⁹ A prosecutor is permitted "to argue the evidence and any reasonable inferences that may arise from the evidence," but cannot present a factual argument to the jury that is not supported by evidence.²⁰ A court reviewing a claim of prosecutorial misconduct must review a prosecutor's remarks in context and give consideration to the particular facts of the case.²¹

Stewart argues that the prosecution mischaracterized testimony when it argued during its closing argument and the prosecutor's rebuttal that Stewart told Kaigler not to testify at trial. Stewart asserts that the evidence presented at trial demonstrates that he told Kaigler that he "didn't have to" testify. We find that Kaigler's testimony gives rise to a reasonable inference that Stewart was telling him not to testify. Because the prosecution is permitted to argue reasonable inferences that arise from the evidence, the prosecution's characterization of Kaigler's testimony was not improper.²²

Stewart also asserts that the prosecution impermissibly provided a personal opinion regarding his guilt by indicating that "[w]e feel or the evidence shows that overwhelmingly that there should be a guilty conviction on all counts." Although the prosecutor used the words "we feel," the statement was made at the conclusion of the prosecutor's closing argument after he reviewed the evidence presented at trial. Considering the statement in context, we find that the prosecution was asserting that the evidence demonstrated Stewart's guilt. "Where the prosecutor's argument is based upon the evidence and does not suggest that the jury decide the

¹⁶ *Hunter*, 466 Mich at 6.

¹⁷ *People v Callon*, 256 Mich App 312, 329; 662 NW2d 501 (2003).

¹⁸ *Id.*

¹⁹ *People v Dobek*, 274 Mich App 58, 63; 732 NW2d 546 (2007).

²⁰ *Callon*, 256 Mich App at 330.

²¹ *Id.*

²² *Id.*

case on the authority of the prosecutor's office, the words 'I believe' or 'I want you to convict' are not improper."²³ Accordingly, there was no plain error.²⁴

Finally, Stewart contends that he was denied the effective assistance of counsel when defense counsel failed to object to the allegedly improper comments made by the prosecution. We disagree. This Court's review of unpreserved claims of ineffective assistance of counsel is limited to mistakes apparent on the record.²⁵ To demonstrate ineffective assistance of counsel:

[A] defendant must show that (1) counsel's performance was below an objective standard of reasonableness under professional norms and (2) there is a reasonable probability that, if not for counsel's errors, the result would have been different and the result that did occur was fundamentally unfair or unreliable.²⁶

Because the remarks made by the prosecutor were not improper, there was no prosecutorial misconduct, as counsel is not required to "advance a meritless argument or raise a futile objection."²⁷

Affirmed.

/s/ Christopher M. Murray
/s/ Michael J. Talbot
/s/ Deborah A. Servitto

²³ *People v Swartz*, 171 Mich App 364, 370-371; 429 NW2d 905 (1988).

²⁴ *Callon*, 256 Mich App at 329.

²⁵ *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002).

²⁶ *People v Odom*, 276 Mich App 407, 415; 740 NW2d 557 (2007).

²⁷ *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010).