

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JARQUECE DAMON BLOODWORTH,

Defendant-Appellant.

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UNPUBLISHED

March 20, 2012

No. 302409

Wayne Circuit Court

LC No. 09-030166-FC

Before: O'CONNELL, P.J., and SAWYER and TALBOT, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of voluntary manslaughter, MCL 750.321, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was charged with first-degree premeditated murder, MCL 750.316, but convicted of the lesser included offense of voluntary manslaughter, MCL 750.321. Defendant was sentenced to 57 months to 15 years' imprisonment for the voluntary manslaughter conviction and two years' imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

First, defendant argues that the trial court's removal of defendant's first court-appointed attorney, Gabi Silver, just prior to trial, because of a perceived conflict, was a structural error that requires a new trial. We disagree.

This Court reviews a trial court's discretion affecting defendant's right to counsel of choice for an abuse of discretion. *People v Akins*, 259 Mich App 545, 556; 675 NW2d 863 (2003). An abuse of discretion occurs when the trial court's decision falls outside the range of principled outcomes. *People v Blackston*, 481 Mich 451, 460; 751 NW2d 408 (2008). "[H]armless-error analysis does not apply where a trial court violates a defendant's Sixth Amendment right to counsel by improperly removing appointed or retained trial counsel and [ ] a defendant need not establish prejudice under these circumstances." *People v Johnson*, 215 Mich App 658, 669; 547 NW2d 65 (1996). "[R]eversal is required even if no prejudice is shown in improperly removing a defendant's court-appointed attorney." *Id.* at 668. Also, "[t]he application of ethical norms to a decision whether to disqualify counsel is reviewed de novo." *Rymal v Baergen*, 262 Mich App 274, 317; 686 NW2d 241 (2004).

The United States and Michigan constitutions provide that an accused has the right to counsel for his defense. *People v Aceval*, 282 Mich App 379, 386; 764 NW2d 285 (2009). This

guaranteed right incorporates a defendant's right to choice of counsel. *Id.* However, "the right to counsel of choice does not extend to defendants who require counsel to be appointed for them." *United States v Gonzalez-Lopez*, 548 US 140, 151; 126 S Ct 2557; 165 L Ed 2d 409 (2006); *Aceval*, 282 Mich App at 386. However, "the arbitrary, unjustified removal of a defendant's appointed counsel by the trial court during a critical stage in the proceedings, over the objection of the defendant, violates the defendant's Sixth Amendment right to counsel." *Johnson*, 215 Mich App at 665-666. Also, "once the right to counsel exists, there is a correlative right to effective representation that is free from actual conflicts of interest." *In re Osborne*, 237 Mich App 597, 606; 603 NW2d 824 (1999).

Prior to defendant's trial, Silver became aware of a potential conflict of interest, which she explained to defendant. During a meeting with defendant, defendant indicated that he had some information regarding another murder case, which involved a defendant that Silver's husband was representing. Defendant did not know whether he was going to take a deal or whether the prosecution was going to offer him a deal for the information he had regarding this other defendant. Despite the potential conflict of interest, defendant wanted Silver to remain his defense counsel and also asserted that he did not want a deal if it meant losing Silver as his counsel. The trial court removed Silver because of the potential appearance of impropriety and appointed Matthew Evans to represent defendant.

We hold that defendant was not entitled to a court-appointed counsel of his choice. *Aceval*, 282 Mich App at 386. Defendant was entitled to representation free from conflicts of interest. *In re Osborne*, 237 Mich App at 606. We hold that the removal of Silver for the potential appearance of impropriety was not arbitrary because the trial court was remedying the potential conflict of interest regarding the information defendant had pertaining to another defendant that was being represented by Silver's husband and the possibility that defendant may want to accept a potential deal from the prosecution. Therefore, we hold that defendant's Sixth Amendment right to counsel was not violated. *Johnson*, 215 Mich App at 665-666.

Next, defendant argues that the prosecution failed to prove beyond a reasonable doubt that defendant did not shoot the decedent in self-defense. We disagree.

In reviewing the sufficiency of the evidence, this Court reviews the evidence de novo, in the light most favorable to the prosecution. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005), overruled on other grounds *People v Nyx*, 479 Mich 112 (2007); *People v Ericksen*, 288 Mich App 192, 196; 793 NW2d 120 (2010). This Court determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *Id.*

"Voluntary manslaughter is an intentional killing committed under the influence of passion or hot blood produced by adequate provocation and before a reasonable time has passed for the blood to cool and reason to resume its habitual control." *People v Fortson*, 202 Mich App 13, 19; 507 NW2d 763 (1993). The elements of felony-firearm, MCL 750.227b, are that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony. *People v Taylor*, 275 Mich App 177, 179; 737 NW2d 790 (2007). "[O]nce the defendant injects the issue of self-defense and satisfies the initial burden of producing some evidence from which a jury could conclude that the elements necessary to establish a prima facie defense of self-

defense exist, the prosecution bears the burden of proof to exclude the possibility that the killing was done in self-defense.” *People v Dupree*, 486 Mich 693, 709-710; 788 NW2d 399 (2010). The Self-Defense Act (SDA), MCL 780.971 *et seq.*, provides that “an individual who has not or is not engaged in the commission of a crime at the time he or she uses deadly force may use deadly force against another individual anywhere he or she has the legal right to be with no duty to retreat if . . . [t]he individual honestly and reasonably believes that the use of deadly force is necessary to prevent the imminent death of or imminent great bodily harm to himself or herself or to another individual.” MCL 780.972(1)(a).

A jury is free to draw its own conclusions of the evidence or reject it outright. *People v Roper*, 286 Mich App 77, 88; 777 NW2d 483 (2009). “[B]ecause of the difficulty of proving an actor’s state of mind, minimal circumstantial evidence is sufficient.” *People v Fetterley*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998). Moreover, the credibility of witnesses’ testimony is a question for the trier of fact that this Court does not resolve anew. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000).

This case arises out of the killing of George Douglas, Jr. Here, there is evidence that immediately after the decedent was shot, the decedent’s fiancé, Lisa Davis, did not see a knife at the crime scene. Furthermore, there is evidence that Davis did not remove a knife from the decedent’s person or from the location. Also, police officer Eugene Bomber did not see any weapons at the crime scene. Police officer Robert Eisenmann looked for but did not observe any knives or other weapons at the crime scene. Additionally, police officer David Babcock did not see a knife in the area of or on the person of the decedent. However, there is also evidence that the decedent charged defendant with a knife, swung the knife at defendant twice, and tried to stab defendant immediately prior to defendant shooting him.

The jury is free to reject defendant’s witnesses’ testimony that the decedent had a knife and came after defendant with a knife. *Roper*, 286 Mich App at 88; *Davis*, 241 Mich App at 700. We hold that from the evidence presented, viewed in a light most favorable to the prosecution, the jury could have reasonably concluded that the decedent did not have a knife. Thus, we conclude that if the decedent did not have a weapon, defendant could not have honestly and reasonably believed that the use of deadly force was necessary to prevent imminent death or great bodily harm to himself at the hands of the decedent. Therefore, we hold, viewing the evidence in the light most favorable to the prosecution, the evidence was sufficient to prove beyond a reasonable doubt that defendant did not shoot the decedent in self-defense.

Next, defendant argues that trial court abused its discretion by allowing the prosecution to impeach witness Jethro Bell with evidence of a prior conviction that did not involve theft or dishonesty, or alternatively, defense counsel was ineffective for failing to object to this evidence. We disagree.

In order to preserve an issue of the improper impeachment of a witness for review on appeal, a defendant must object at the time of the impeachment. *People v Rice*, 235 Mich App 429, 439; 597 NW2d 843 (1999). On cross-examination the prosecution asked Bell if he had ever been convicted of a felony involving dishonesty or fraud within the last 10 years and Bell answered affirmatively. Defense counsel did not object to this line of questioning. Therefore, this issue has not been properly preserved for review. This Court reviews unpreserved claims of

error regarding a trial court's decision to admit evidence for plain error. *People v Spanke*, 254 Mich App 642, 644; 658 NW2d 504 (2003). This Court reviews the record to determine whether plain error occurred that affected a defendant's substantial rights. *Id.* An ineffective assistance of counsel claim, which is a question of constitutional law, is reviewed by this Court de novo. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002).

The Michigan Rules of Evidence provide:

(a) For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall not be admitted unless the evidence has been elicited from the witness or established by public record during cross-examination, and

(1) the crime contained an element of dishonesty or false statement . . . .  
[MRE 609(a).]

Where a defendant moves to exclude reference to a witness's prior conviction, the trial court may, in the exercise of its discretion, preclude such reference, and it is error to fail or refuse to exercise this discretion. *Rice*, 235 Mich App at 438.

"It is improper to impeach a defendant by telling the jury only of the existence of unnamed prior felony convictions, without providing the names of the offenses. It is the nature, rather than the fact, of a prior felony conviction which the jury is to use in its evaluation of credibility." *People v Van Dorsten*, 409 Mich 942; 298 NW2d 421 (1980); see also *People v McBride*, 413 Mich 341, 344-345; 319 NW2d 535 (1982).

Here, defendant argues that the prosecution improperly impeached Bell with evidence of a prior drug offense. This Court notes that defendant's argument is based on his assertion that, according to the Offender Tracking Information System, Bell's only prior conviction was a drug offense.

However, on cross-examination the prosecution asked Bell if he had ever been convicted of a felony involving dishonesty or fraud within the last 10 years and Bell answered affirmatively. Because the material issue was Bell's credibility, we hold that error, if any, regarding not informing the jurors of the specific name of Bell's prior felony was harmless in light of the fact that the jurors were informed of the nature of the prior conviction, that is, that dishonesty or fraud was involved. *McBride*, 413 Mich at 344-345; *Van Dorsten*, 409 Mich at 942. Furthermore, we hold that given the evidence against defendant and the jurors' determination that defendant did not act in self-defense, any error was not a plain error affecting defendant's substantial rights. *Spanke*, 254 Mich at 645.

To demonstrate ineffective assistance of counsel, a defendant must show that his attorney's performance fell below an objective standard of reasonableness under prevailing professional norms and this performance prejudiced him. *People v Kimble*, 470 Mich 305, 314; 684 NW2d 669 (2004). To demonstrate prejudice, the defendant must show the probability that but for counsel's errors, the result of the proceedings would have differed. *People v Solmonson*, 261 Mich App 657, 663-664; 683 NW2d 761 (2004). Counsel is presumed to be effective and engaged in trial strategy, and the defendant has the heavy burden to prove otherwise. *LeBlanc*,

465 Mich at 578; *People v Odom*, 276 Mich App 407, 415; 740 NW2d 557 (2007). “In addition, trial counsel is not ineffective when failing to make objections that are lacking in merit.” *People v Matuszak*, 263 Mich App 42, 58; 687 NW2d 342 (2004).

We held that because the material issue regarding introducing evidence of the nature of Bell’s prior felony offense was Bell’s credibility, error, if any, regarding the specific name of Bell’s prior felony was harmless in light of the fact that the jurors were informed that dishonesty or fraud was involved. Furthermore, we held that given the evidence against defendant and the jurors’ determination that defendant did not act in self-defense, any error was not a plain error affecting defendant’s substantial rights. Therefore, we also hold that error, if any, on the part of defense counsel for not objecting to the prosecution’s impeachment of Bell did not prejudice defendant. Therefore, we hold that defendant has failed to establish that he was denied the effective assistance of counsel. *Kimble*, 470 Mich at 314.

Lastly, defendant argues that the prosecution’s closing argument that either Davis or defendant was lying mischaracterized the evidence presented, and thus, was prosecutorial misconduct, or alternatively, defense counsel was ineffective for failing to object to this argument. We disagree.

In order to properly preserve a claim of prosecutorial misconduct for review by this Court, the defendant must object to the prosecutor’s conduct. *People v Leshaj*, 249 Mich App 417, 419; 641 NW2d 872 (2002). This Court’s review of prosecutorial misconduct is generally precluded absent the defendant’s objection, because the trial court is otherwise deprived of a chance to cure the error. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). Defendant did not object to the prosecution’s alleged misconduct during its closing argument, and thus, this aspect of the issue has not been properly preserved for review. This Court reviews unpreserved claims of prosecutorial misconduct for plain error that affected defendant’s substantial rights. *People v Fyda*, 288 Mich App 446, 460-461; 793 NW2d 712 (2010). “Reversal is warranted only when the error resulted in the conviction of an actually innocent defendant or when the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. No error requiring reversal will be found if the prejudicial effect of the prosecutor’s comments could have been cured by a timely instruction.” *Leshaj*, 249 Mich App at 419.

“Prosecutorial arguments are [ ] considered in light of defense arguments.” *People v Lawton*, 196 Mich App 341, 353; 492 NW2d 810 (1992). “[A] prosecutor is free to argue the evidence and all reasonable inferences arising from it as they relate to the prosecutor’s theory of the case.” *People v Goodin*, 257 Mich App 425, 432; 668 NW2d 392 (2003). Also, the prosecution may argue that a defendant is lying, if this is related to or supported by the evidence. *People v Cowell*, 44 Mich App 623, 627-629; 205 NW2d 600 (1973). Furthermore, where a defendant’s claim of prosecutorial misconduct is unpreserved, reversal is warranted only if defendant avoids forfeiture under the plain error rule, and he establishes that the plain, forfeited error resulted in the conviction of an actually innocent defendant or that the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

During its closing argument the prosecution asserted that the jurors must ask themselves “is [defendant] telling you the truth, or is [ ] Davis lying.” “[E]ither she’s lying, or he’s not telling the truth.” Defense counsel did not object to these statements.

Here, according to defendant, the decedent came to the abandoned house with a knife and tried to stab defendant. Also, defendant told police officer Nancy Foster that Davis was present when the decedent went to the abandoned home with a knife. However, according to Davis, immediately after the decedent was shot, she did not see a knife at the abandoned home and Davis did not remove a knife from the decedent’s person or from the crime scene. It appears that the prosecution’s theory of the case is that the decedent did not have a knife. Also, the trial court gave the jurors the instruction that “[t]he lawyers’ statements are arguments [and] not evidence. They are only means to help you understand the evidence, and each side’s legal theories.” Therefore, we hold that the prosecution was free to argue that either the defendant was lying or Davis was lying because this argument was regarding the prosecution’s theory of the evidence on the record, and furthermore, defendant’s testimony supported the conclusion that the decedent had a knife and Davis’s testimony supported the conclusion that the decedent did not have a knife. *Goodin*, 257 Mich App at 432; *Cowell*, 44 Mich App at 627-629. Thus, we hold that the prosecution’s statements were not in error. Therefore, defendant has not avoided forfeiture of this issue and reversal is not required. *Carines*, 460 Mich at 763-764.

We held that defendant’s argument that the prosecution’s closing argument constituted prosecutorial misconduct was not in error. Therefore, we also hold that defense counsel was not ineffective for failing to object to the prosecution’s statements during its closing argument. *Matuszak*, 263 Mich App at 58.

Affirmed.

/s/ Peter D. O’Connell  
/s/ David H. Sawyer  
/s/ Michael J. Talbot