

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEROY LYONS,

Defendant-Appellant.

UNPUBLISHED

March 27, 2001

No. 222430

Wayne Circuit Court

Criminal Division

LC No. 98-009513

Before: Markey, P.J., and Jansen and Zahra, JJ.

PER CURIAM.

Defendant was convicted by a jury of two counts of first-degree murder, MCL 750.316; MSA 28.548, in the deaths of Christopher Clark and Antoinette Bates, and sentenced to two concurrent terms of life imprisonment without the possibility of parole. He appeals as of right. We affirm.

Clark and Bates were allegedly killed for stealing money from defendant, who was Bates' uncle. Clark's body was found in the trunk of defendant's father's burning car. Bates has not been seen since Clark's 1987 murder.

Defendant argues on appeal that he was denied a fair trial because of prosecutorial misconduct. We disagree. This Court considers preserved claims of alleged prosecutorial misconduct in context to determine whether defendant was denied a fair and impartial trial. *People v Reid*, 233 Mich App 457, 466; 592 NW2d 767 (1999). Review of unpreserved allegations is foreclosed unless no curative instruction could have removed any undue prejudice to defendant or manifest injustice would result from failure to review the alleged misconduct. *Id.*

The prosecutor is free to argue the evidence and all reasonable inferences from the evidence as it relates to the prosecution's theory of the case. *People v Fisher*, 220 Mich App 133, 156; 559 NW2d 318 (1996). We have reviewed each of defendant's challenges, many of which did not receive an objection to at trial, and are satisfied that defendant was not denied a fair and impartial trial in this case. The prosecutor's questions were not improper and his comments were supported by the evidence.

Next, defendant contends that the evidence was insufficient to support his convictions. We disagree. This Court reviews the evidence de novo in a light most favorable to the

prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979). Our review is deferential; we draw all reasonable inferences and make credibility choices in support of the jury verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). To be convicted as an aider and abettor, a defendant must possess the same intent as the principal or know that the principal possesses that intent. *People v King*, 210 Mich App 425, 430; 534 NW2d 534 (1995). See also *Carines, supra*; *People v Buck*, 197 Mich App 404, 425-426; 496 NW2d 321 (1992); *People v Evans*, 173 Mich App 631, 636; 434 NW2d 452 (1988).

Here, there was ample evidence to support the jury verdict that defendant aided and abetted in Clark's murder. There was evidence that defendant was a drug dealer and that his brother worked for him as an "enforcer." Also, viewed most favorably to the prosecution, the evidence permitted the jury to find that defendant said he was going to kill Clark, that he was armed with a gun, that he was present when his brother beat Clark with a bat, that he himself fired shots, that he retrieved a gun involved in the killing from a witness, and that he warned the witness not to tell anyone what had happened.

The evidence that Bates was unlawfully killed was also sufficient. The corpus delicti may be established by circumstantial evidence and the reasonable inferences drawn therefrom. *People v Modelski*, 164 Mich App 337, 341; 416 NW2d 708 (1987). Here, there was evidence that Bates stole money from defendant, that defendant threatened to kill her and that she was last seen at his house. There was also evidence that defendant's brother told a witness that Bates had been killed, that Bates had not been in contact with family or friends since Clark's murder, and that there is no official record of her existence since the time of the alleged murder. The evidence and inferences are sufficient to support the conclusion that she was killed.

Defendant next argues that the trial court failed to protect his rights in several respects, none of which have merit. First, defendant did not make a timely request to wear civilian clothing, did not request extra time or assistance, and did not take advantage of the trial court's offer to adjourn if clothing became available. *People v Shaw*, 381 Mich 467, 474-475; 164 NW2d 7 (1969). Therefore, this issue does not warrant relief.

Defendant's objection to Venus Bates' testimony was, in fact, sustained and the trial court agreed with defendant that she could not testify that defendant beat up her son. Thus, defendant was not denied a fair trial on this basis. *Carines, supra*, at 763.

The prosecutor concedes that his inadvertent reference to defendant's photograph as a "mug shot" was error, and defendant's objection on that ground was sustained. The jury was instructed that attorneys' questions are not evidence. The trial court did not abuse its discretion in denying defendant's motion for a mistrial on this issue. *People v Griffin*, 235 Mich App 27, 36; 597 NW2d 176 (1999).

Contrary to defendant's claim, it was his brother who requested a curative instruction on the issue of drug dealing, not defendant himself. Moreover, his brother's counsel did not

disagree with the trial court's opinion that the requested instruction was not supported by the evidence. In any case, the issue of defendant's drug operation and drug money was an integral part of this case and was properly before the jury. *People v Flynn*, 93 Mich App 713, 719; 287 NW2d 329 (1979). Accordingly, this issue is without merit.

Defendant's requested instruction on accomplice testimony, CJI2d 5.5, was not supported by the evidence. There was no evidence to suggest that the witness took part in the crime defendant was charged with committing. See CJI2d 5.5, ¶ 1. There is no evidence that the witness knew about the killing until after it occurred. An instruction that is not supported by the evidence should not be given. *People v Wess*, 235 Mich App 241, 243; 597 NW2d 215 (1999).

Finally, there is no merit to defendant's claim that the cumulative effect of errors denied him a fair trial in this case. Where, as here, a number of errors have not been found, there can be no cumulative effect. *People v Mayhew*, 236 Mich App 112, 128; 600 NW2d 370 (1999).

Affirmed.

/s/ Jane E. Markey
/s/ Kathleen Jansen
/s/ Brian K. Zahra