

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM D. BONNER,

Defendant-Appellant.

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UNPUBLISHED

November 20, 2003

No. 241592

Wayne Circuit Court

LC No. 01-006924-01

Before: Owens, P.J., and Fitzgerald and Saad, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree felony murder, MCL 750.316, assault with intent to murder, MCL 750.83, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to life imprisonment without parole for the felony murder conviction, life imprisonment for the assault conviction, three to five years' imprisonment for the felon in possession conviction, and to a mandatory two-year term of imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

The underlying offense for the felony murder charge was armed robbery. Defendant argues that he was denied a fair trial because the trial court failed to instruct the jury that the offense of armed robbery is a specific intent crime. Defendant did not object at trial to the purported deficiency in the jury instructions, and we therefore review for plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

This Court reviews de novo a defendant's claim of instructional error. *People v Marion*, 250 Mich App 446, 448; 647 NW2d 521 (2002). This Court reviews jury instructions as a whole to determine whether error requiring reversal occurred. *People v Bartlett*, 231 Mich App 139, 143; 585 NW2d 341 (1998). Jury instructions must include all elements of the charged offenses, and must not omit material issues, defenses, and theories that the evidence supports. *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000). Even when somewhat imperfect, jury instructions do not qualify as erroneous provided that they fairly present to the jury the issues to be tried and sufficiently protect the defendant's rights. *People v Knapp*, 244 Mich App 361, 376; 624 NW2d 227 (2001). Because defendant failed to object at trial to the allegedly erroneous instruction, and thus has failed to preserve his argument for appeal, we review the instructions only to determine whether any plain error affected defendant's substantial rights, which generally requires a showing of prejudice. *Knapp, supra* at 375.

Here, the record belies defendant's contention that the jury was not properly instructed on the specific intent element of armed robbery. The court specifically instructed that, "At the time he took the money, the defendant intended to take it away from [the victim] permanently." This instruction fairly presented to the jury the issue of specific intent. *Canales, supra*. No plain error is apparent from our review of the record, *Carines, supra*, and defendant's argument is therefore without merit.

Defendant also argues that he was denied a fair trial by three improper prosecutorial comments during closing arguments. A defendant must object to preserve a claim of prosecutorial misconduct for appellate review. *People v Schutte*, 240 Mich App 713, 720; 613 NW2d 370 (2000). Because defendant did not object to two of the prosecutor's comments at trial this issue is mainly unpreserved. But, defendant did object to one of the prosecutor's comments in his rebuttal argument and thus this specific argument is preserved for our review. *Id.*

During defense counsel's closing argument, counsel argued:

Now we went on and on and on and listened half of a day why the People weren't able to produce any witnesses.

\* \* \*

All the holes, all the problems, all the witnesses that didn't show up, that's not William Bonner's fault. That's Mr. Moreland's problem.

In rebuttal, the prosecutor stated:

You know why these people are not in court. They're all involved in drugs. They don't want to come here and testify. But remember this, the statements they gave to Sergeant Moore all said he was the murderer. They were there. They came there at one time or another and they're all in the neighborhood and they all said he was the murderer. Both the Barber brothers or cousins said it. Ronald Barnes said it.

Defense counsel objected to the statement, and a sidebar was conducted. Following the sidebar, the prosecutor made the following statement:

But you all know why they're not here and you all know why we have the witnesses that we have and why we produced them. You heard Sergeant Moore say that we diligently sought all the witnesses that we could and the ones we could find, that's who we produced.

It appears that the above statement by the prosecutor was made in response to discussions held during the sidebar. There is no indication in the record that defense counsel sought a curative instruction or disagreed with the manner in which the trial court handled his objection.

We review claims of prosecutorial misconduct de novo. *People v Pfaffle*, 246 Mich App 282, 288; 632 NW2d 162 (2001). The test is whether the prosecutor's alleged misconduct denied defendant a fair and impartial trial. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411

(2001). This Court reviews allegations of prosecutorial misconduct on a case-by-case basis and examines the pertinent portion of the record to evaluate a prosecutor's remarks in context, *People v Bahoda*, 448 Mich 261, 267; 531 NW2d 659 (1995); *People v Noble*, 238 Mich App 647, 660; 608 NW2d 123 (1999), and in light of all the facts of the case. *People v Rodriguez*, 251 Mich App 10, 30; 650 NW2d 96 (2002). A prosecutor's comments must also be read as a whole and evaluated in light of defense arguments and the relationship they bear to the evidence admitted at trial. *Id.* Furthermore, otherwise improper remarks by a prosecutor might not require reversal if made in response to issues the defense has raised. *People v Duncan*, 402 Mich 1, 16; 260 NW2d 58 (1977).

Here, the prosecutor's comments were made in response to the defense argument. Even assuming that the prosecutor's comments were improper, we cannot conclude that defendant was denied a fair and impartial trial as a result of the comments, particularly where there is no record support for defendant's assertion that the trial court denied his request for a cautionary instruction.

Further, we find that neither of the two allegedly improper comments to which defendant failed to object deprived defendant of a fair trial. Defense counsel stipulated at trial that defendant was a convicted felon. Thus, there was no error in the prosecutor's reference to defendant as a convict. Additionally, the prosecutor's comments about the confusing nature of defense counsel's questions and the diversion of the jury's attention did not improperly denigrate defense counsel. *People v Kennebrew*, 220 Mich App 601, 607; 560 NW2d 354 (1996).

Affirmed.

/s/ Donald S. Owens  
/s/ E. Thomas Fitzgerald  
/s/ Henry William Saad