

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARCUS M. BRIM,

Defendant-Appellant.

UNPUBLISHED

January 15, 2004

No. 244513

Ionia Circuit Court

LC No. 01-012065-FH

Before: Markey, P.J., and Murphy and Talbot, JJ

PER CURIAM.

Defendant appeals by right his conviction after jury trial of being a prisoner in possession of a weapon, MCL 800.283(4), 285(1). Defendant argues on appeal that the prosecutor denied him a fair trial because of improper cross-examination and that insufficient evidence was presented to prove he did not act in self-defense. We conclude that the prosecutor's improper cross-examination did not undermine the verdict or seriously affect the fairness, integrity or public reputation of judicial proceedings. So reversal is not warranted. We also conclude that ample evidence at trial permitted a rational jury to find all of the elements of the charged offense were proved beyond a reasonable doubt, including that defendant was not acting in lawful self-defense. Accordingly, we affirm.

First, defendant claims he was denied a fair trial because the prosecutor repeatedly asked him on cross-examination if the prosecution's witnesses were lying. While we agree with defendant that the prosecutor's questions were improper, we disagree that the error merits reversal.

We review claims of prosecutorial misconduct de novo to determine whether defendant was denied a fair and impartial trial. *People v Pfaffle*, 246 Mich App 282, 288; 632 NW2d 162 (2001); *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001). Here, the prosecutor concedes on appeal that he improperly cross-examined defendant. A prosecutor may not ask a defendant to comment on the credibility of prosecution witnesses because defendant's opinion of their credibility is not relevant. *People v Buckey*, 424 Mich 1, 17; 378 NW2d 432 (1985). But the error was not preserved; therefore, our review is limited to plain error which affected defendant's substantial rights to merit reversal. *People v Carines*, 460 Mich 750, 763, 774; 597 NW 2d 130 (1999); *Pfaffle, supra*. To show that the error affected his substantial rights, defendant bears the burden of demonstrating that "the error affected the outcome of the lower

court proceedings.” *Carines, supra* at 763. Moreover, reversal is warranted only when the plain error results in the conviction of an actually innocent defendant or seriously affected the fairness, integrity or public reputation of the judicial proceedings, independent of defendant’s innocence. *Id.*; *People v Schutte*, 240 Mich App 713, 720; 613 NW2d 370 (2000).

It does not matter here whether defendant handled the prosecutor’s improper questions with ease or difficulty the error did not affect defendant’s substantial rights because the questioning did not result in the conviction of an actually innocent defendant, or seriously affect the fairness, integrity or public reputation of trial regardless of the guilt or innocence of defendant. The evidence of defendant’s guilt was overwhelming. Four guards testified to defendant’s having a weapon in his hands; two of the four guards testified that defendant attempted to assault another inmate with the weapon, and one guard testified to circumstances preceding the incident which contradicted defendant’s claim of self-defense. Moreover, defendant admitted to a Michigan State Police detective that he not only had possessed the weapon, but also that he had made it that morning. Thus, the unpreserved prosecutorial misconduct here does not merit reversal because it was not outcome determinative, did not result in the conviction of an innocent man, and did not seriously affect the fairness, integrity or public reputation of trial regardless of defendant’s guilt or innocence. *Carines, supra* at 763, 774; *Schutte, supra* at 720.

Next, defendant argues that the prosecutor failed to prove his guilt beyond a reasonable doubt because the evidence was insufficient to prove that he did not act in self-defense. We disagree.

We review de novo a claim that evidence at trial was insufficient to support a conviction. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). We must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found all of the elements of the offense were proved beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), mod 441 Mich 1201 (1992); *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW 2d 692 (1996). Circumstantial evidence and reasonable inferences therefrom may be sufficient for rational triers of fact to find all of the elements of an offense beyond a reasonable doubt. *Id.*; *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Further, this Court must review claims of insufficient evidence with deference by making all reasonable inferences and resolving credibility conflicts in favor of the jury verdict. *People v Gonzalez*, 468 Mich 636, 640-641; 664 NW2d 159 (2003); *Wolfe, supra* at 514-515.

In this case, as already discussed, the evidence of defendant’s guilt was overwhelming. The only evidence of self-defense was defendant’s own self-serving testimony. But defendant’s claim of self-defense was rebutted by his own out-of-court admissions to the contrary and by testimony of two guards that defendant was the aggressor who possessed a weapon. Defendant’s argument fails because it is essentially an attack on the credibility of witnesses and the weight to be accorded to the evidence at trial, both of which are matters for the trier of fact to resolve. *Wolfe, supra* at 514-515; *People v Avant*, 235 Mich App 499, 506; 597 NW 2d 864 (1999). The prosecutor must only prove his own theory beyond a reasonable doubt in the face of whatever contradictory evidence the defendant provides. *Nowack, supra* at 400. In this case, the prosecutor presented ample evidence, that if believed by a rational jury, both proved beyond a

reasonable doubt the prosecutor's theory and disproved defendant's claim of self-defense. See *Truong, supra* at 337-338.

We affirm.

/s/ Jane E. Markey
/s/ William B. Murphy
/s/ Michael J. Talbot