STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 16, 2004
v	No. 249992 Van Buren Circuit Court
CARLENE CANDICE ROACHE, a/k/a CARIE SLEVATZ, Defendant-Appellant.	LC No. 03-013188-FC

Before: Hoekstra, P.J., and Griffin and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right her convictions by a jury of first-degree premeditated murder, MCL 750.316, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to life without the possibility of parole for the first-degree murder conviction and to two years in prison, to run consecutively and preceding the life sentence, for the felony-firearm conviction. We affirm.

I

Defendant was charged with crimes arising out of the shooting death of Robert Joseph Slevatz. Sometime after defendant became acquainted with Slevatz, she moved in with him to care for his ailing wife Mildred, who subsequently passed away. Shortly after Mildred's death, defendant and Slevatz developed a relationship, and they both moved into Slevatz' childhood home. Defendant testified that Slevatz had abused his deceased wife and that he began to abuse her as well. Defendant claimed that Slevatz suffered from mental problems and that he required medication. Defendant left Slevatz for some months, but later returned to him on the condition that he see a doctor and stay on medication.

On August 18, 2002, defendant had a disagreement with Slevatz and left him at a restaurant. After returning home, she informed the police that Slevatz had illegal firearms and explosives in the home. On August 21, 2002, the police searched Slevatz' home and confiscated several unregistered weapons, but found no explosives. Slevatz was arrested and later released. Slevatz became estranged from defendant as a result of this incident and stayed with his brother, who lived across the street from his home.

On August 31, 2002, Slevatz went to his home to turn off the utilities and retrieve some personal items. When he could not find some silver coins, he began to search the home. Defendant called the police several times regarding Slevatz' search, but the police did not come out to the home because there was no indication of criminal activity. Defendant testified that Slevatz threatened her and that she shot him out of fear for her life. An autopsy revealed six separate gunshot wounds to Slevatz.

II

First, defendant argues that the trial court erred when it prevented her expert on battered spouse syndrome ("BSS") from answering hypothetical questions which would have helped the jury to understand otherwise inexplicable behaviors of the defendant. Defendant did not object to the trial court's ruling on the ground raised on appeal, and defense counsel did not make an offer of proof; thus, the issue was not preserved for appellate review, and it will be analyzed for plain error affecting substantial rights. *People v Carines*, 460 Mich 750; 597 NW2d 130 (1999).

Moreover, following our review, we conclude the record does not support defendant's contention that the trial court impermissibly interfered with defendant's expert's testimony. There were four separate exchanges regarding the scope of the expert's testimony, but only two of the exchanges were objected to by defendant. Regarding the two objections, the trial court did not rule on one and ruled in favor of defendant on the other. Thus, there was no ruling by the trial court that prevented defendant's counsel from asking hypothetical questions of its expert. For this reason, there is nothing for this Court to review and no plain error that affected defendant's substantial rights.

III

As her second issue, defendant contends that the prosecutor engaged in several instances of alleged misconduct that deprived defendant of a fair and impartial trial. However, defense counsel failed to object to all but one of the alleged instances of misconduct. Furthermore, in the one instance where defense counsel did object, the objection was based upon the admissibility of the evidence. Consequently, none of the alleged misconduct has been preserved. Therefore, we will review this issue for plain error affecting defendant's substantial rights. *People v McLaughlin*, 258 Mich App 635, 645; 672 NW2d 860 (2003). Moreover, "[n]o error requiring reversal will be found if the prejudicial effect of the prosecutor's comments could have been cured by a timely instruction." *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001).

First, defendant claims error requiring reversal with the prosecutor's opening statement. The opening statement is an opportunity for the prosecutor to state the facts he expects to be proven at trial. *People v Johnson*, 187 Mich App 621, 626; 468 NW2d 307 (1991). Statements regarding the facts to be proven will not constitute error requiring reversal, even if no evidence was presented at trial in support of the statement, so long as the prosecutor made the statements in good faith and there was no prejudice to the defendant. *People v Wolverton*, 227 Mich App 72, 75; 574 NW2d 703 (1997).

In the present case, all of the prosecutor's remarks in the opening statement were supported at trial and none of the remarks unfairly prejudiced defendant. In his opening

argument, the prosecutor stated that there was a call to the police on the day of the murder. The prosecutor noted that Slevatz had shut off the home's utilities, but described the call as involving a domestic dispute about property, in which the police would not get involved because there were no allegations of illegality. Defendant contends that by characterizing the turning off of power as legal and stating that the police had no reason to respond, the prosecutor committed error requiring reversal. We disagree.

The prosecutor's statements were clearly an attempt to place in context defendant's claim of self-defense and to explain to the jury why the police never responded to the calls made to the police department on the day of the homicide. At trial, the prosecutor elicited testimony from Officer Whiting, who spoke with Slevatz and defendant on the day of the homicide. Whiting testified, in direct support of the prosecution's opening statement, that there was no evidence of illegal activity during the conversation. A prosecutor's comments must always be evaluated in context and in light of defendant's arguments. *People v Thomas*, 260 Mich App 450, 454; 678 NW2d 631 (2004). Because defendant was arguing self-defense, the "prosecutor's remarks were properly responsive to defendant's theory of the case." *Id.*

Defendant also faults the prosecutor's characterization of the eviction notices given to defendant by Slevatz. A prosecutor may not mischaracterize the evidence presented at trial or argue from evidence not presented. *Watson, supra* at 588. Here, the prosecutor stated that Slevatz had gone to court and obtained a notice to quit for an eviction and served it on defendant. Defendant claims that the evictions were not official documents from the court and, thus, that this mischaracterization constitutes misconduct. However, the jury heard evidence that Slevatz prepared two eviction notices, one of which was prepared by a lawyer and labeled Notice to Quit, as he wanted her out of his house. Therefore, the statements were clearly supported by evidence presented at trial. The fact that the prosecutor may have mischaracterized the notice to quit as a court document does not rise to the level of misconduct. Moreover, any prejudicial effect was minimal and could easily have been cured by an objection and timely instruction. For these reasons, none of the prosecutor's comments in his opening statement constituted misconduct warranting reversal.

Next, defendant cites the testimony of two prosecution witnesses who testified that unfired bullets were found in the bedroom and contends that the prosecutor mischaracterized this evidence in his closing argument in order to cast doubt on defendant's claim that she tried to reload the pistol in the bedroom. The first witness was forensic scientist Joel Schultze, who testified:

> As I recall, it was a spent bullet but, again, that would be Mr. Roney.
>
> Right. We usually term the casings or the shell casing after a fire – after a cartridge has been fired. A bullet was what we usually call a spent bullet, and then gun cartridges are unfired bullets as we found over in this room, so – but as I recall, that was a fired bullet.
>
> And then in this area right here there is a closet door with storage and right next to that were two blood spatters that were noted and sketched with blood coming down in a downward – downward motion on this wall. And then moving into this room here where the deceased was found, there is another shell casing

> that was found inside an open gun case. A gun was found here and, *like I said, gun cartridges were on the floor, unfired bullets*. [Emphasis added.]

When read carefully, it is clear that Schultze testified that the unfired bullets were found around Slevatz' body and not in the bedroom. Although the initial statement – "unfired bullets as we found over in this room" – is ambiguous and may refer to the bedroom, his later statement that he found the gun next to the body, when considered in context with the comment "like I said, gun cartridges . . . unfired bullets," clarifies that the earlier statement referred to the room where the body was found and not the bedroom.

The next testimony relied upon as contradicting the prosecutor's characterization of the evidence is that of Joe Roney:

> As far as firearms evidence, we recovered a .25 auto caliber handgun, which is located in what we were calling kind of a work shop area. We also recovered a fired cartridge case in an open gun case, which is also in the same room. A fired bullet was recovered in the hallway between the bedroom and this work shop area. And then we had several cartridge cases that were recovered in the bedroom, one back by the bed, three around this chest. One was actually in the curtain by the window and another behind the table and the dresser.
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> * * *
>
> Q: Now, subsequent to your – well, I guess there is one other item. Were there a number of loose rounds also that were observed near the area of the gun?
>
> A: Yes, there were.

From this testimony, it is clear that Roney found unfired bullets where the gun was found, which was in the room with the body. This room is referred to by Roney as the workshop, and not the bedroom. Therefore, the prosecutor did not mischaracterize the evidence of unfired bullets being found in the room with Slevatz' body and not in the bedroom.

Defendant also asserts that the prosecutor's questions on cross-examination of defendant, regarding charges brought against her in Arizona and Florida for theft, constitute prosecutorial misconduct. The prosecutor questioned defendant about an incident in Arizona where she was accused of stealing $15,000 from a woman for whom she had been house-sitting. He also asked defendant about an arrest in Florida. When defense counsel objected to this line of questioning, the trial court ruled that the questions were permissible under MRE 608 as evidence of motive.

Even if it was error for the trial court to permit this line of questioning, on appeal defendant is not challenging the questioning on the ground of admissibility. The issue framed by defendant on appeal is whether the attempt to pursue this line of questioning constitutes prosecutorial misconduct requiring reversal. This Court has held that a "prosecutor's good-faith effort to admit evidence does not constitute misconduct," *People v Ackerman*, 257 Mich App 434, 448; 669 NW2d 818 (2003), and that a prosecutor is free "to argue the evidence and any reasonable inferences that may arise from the evidence," *id.* at 450. Here, the prosecutor was attempting to show that defendant had a motive to kill Slevatz other than self-defense.

Following our review, we conclude that there is no evidence that the prosecutor pursued this line of questioning in bad faith. Accordingly, this issue is without merit.

Finally, defendant argues that the prosecutor's use of leading questions constituted misconduct. Defendant cites only *People v Frost*, 179 Mich 180; 146 NW 174 (1914), and MCL 768.24 in support of her argument. Neither of these authorities supports defendant's contention; rather, each affirms that it is within the discretion of the trial court to permit leading questions. Therefore, the claim was abandoned on appeal. *Watson*, *supra* at 587, *People v Fields*, 49 Mich App 652, 658; 212 NW2d 612 (1973) ("Moreover, this issue is not developed either by reference to the record, citation to controlling authority, or reasoned argument. Consequently, further consideration on appeal is waived.").

Furthermore, even assuming this issue was not abandoned, defendant's position is clearly contradicted by current authority. This Court has held that it is within the discretion of the trial court in a criminal trial to permit leading questions. *Fields*, *supra* at 658. If there are leading questions, "[i]n order to warrant reversal, it is necessary to show some prejudice or pattern of eliciting inadmissible testimony." *Watson*, *supra* at 587. "Where the defendant is not prejudiced by the leading questions, reversal is not required." *Id.* Because defendant has not demonstrated any evidence of prejudice as the result of leading questions, there was no error warranting reversal.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Richard Allen Griffin
/s/ Stephen L. Borrello