

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

YUL DARNELL WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

January 22, 2009

No. 280673

Wayne Circuit Court

LC No. 07-009095-01

Before: Talbot, P.J., and Bandstra and Gleicher, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of assault with intent to commit murder, MCL 750.83, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to nine to 20 years' imprisonment for the assault conviction and two years' imprisonment for the felony-firearm conviction. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

While the complainant was at the home of defendant, her ex-boyfriend, defendant became angry with a boy who lived across the street, said he was going to shoot him, and began chasing the boy while holding a small silver gun. The complainant chastised defendant for this conduct and indicated that she was leaving. Defendant followed her as she walked down the street. When the complainant refused to speak with him, defendant became angry and cursed at her. She stopped, turned around, noticed that defendant was proceeding in the opposite direction, and then continued walking. A few moments later she heard a gun shot. Within seconds, she heard a second shot and felt pain in her leg. At the hospital, a small caliber bullet was found lodged in the complainant's right buttock, approximately two inches from the spine. In a statement given to the police, defendant admitted to discharging the gun. However, defendant claimed that he did not intend to shoot the complainant, but rather that he shot the gun overhead and into the air.

Defendant argues that he was denied a fair trial when the prosecutor commented in her opening statement that defendant "was always angry with someone" and then again called into question his character when she commented in her closing that "Mr. Williams has an anger problem, and when Mr. Williams gets mad, Mr. Williams gets a gun." Defendant further contends that his counsel was ineffective for failing to object to the prosecutor's alleged misconduct. "Appellate review of improper prosecutorial remarks is generally precluded absent objection by counsel because the trial court is otherwise deprived of an opportunity to cure the

error.” *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). Consequently, this Court reviews unpreserved claims of prosecutorial misconduct only for plain error that affected the defendant’s substantial rights. *People v Thomas*, 260 Mich App 450, 453-454; 678 NW2d 631 (2004). This Court will not “find error requiring reversal where a curative instruction could have alleviated any prejudicial effect.” *People v Unger*, 278 Mich App 210, 235; 749 NW2d 272 (2008) (citation omitted).

Defendant impliedly contends that the prosecutor’s comments were tantamount to the introduction of propensity evidence, which should have been excluded as improper because it could lead to a conviction based not on defendant’s actual behavior regarding the charged conduct, but rather on his character. Defendant’s argument ignores the evidentiary record in this case. It was not necessary for the prosecutor to rely on evidence that defendant had anger management issues and then extrapolate that he was acting in conformity with this bad character trait on the night in question. Instead, there was undisputed evidence that respondent was in fact angry with the complainant and acted on this anger. Initially, defendant became angry with the boy across the street. Defendant also demonstrated anger when the complainant chastised him for his behavior, left the area, and then ignored defendant on her walk home. The complainant testified that defendant appeared angry, his use of a profanity evidenced his anger, and his own admission to the detective that he was angry left little doubt that defendant was angry with the complainant. It was not defendant’s propensity to become angry, but his actual actions, that compelled the jury to conclude that defendant was angry that night. Because of this direct testimony relating defendant’s actual conduct on the night in question, it is unlikely that the prosecutor’s comment in her opening statement that defendant was “always angry with someone” so prejudiced the jury that defendant was denied a fair trial.

Similarly, the prosecutor’s later comment in her closing argument that defendant had “an anger problem, and when Mr. Williams gets mad, Mr. Williams gets a gun” did not deny defendant a fair trial or affect the outcome of the case. The comment must be reviewed in context. The prosecutor was describing the prosecution’s view of the pertinent events. After making the statement, the prosecutor illustrated her point by describing the two instances within minutes of each other where defendant became angry and retrieved a gun. Admittedly, the prosecutor employed slight hyperbole to highlight her point. However, a prosecutor is not required to use the blandest possible language in arguing the facts and inferences. *Unger, supra* at 239.

Consequently, neither of the prosecutor’s comments constituted plain error affecting substantial rights. Further, any prejudice flowing from the prosecutor’s remarks was mitigated by the several instructions given to the jury that they could only consider evidence properly admitted and that the statements and arguments from the lawyers did not comprise evidence. *People v Abraham*, 256 Mich App 265, 279; 662 NW2d 836 (2003).

Defendant also asserts that his trial counsel was ineffective for failing to object to the alleged misconduct by the prosecutor. To establish ineffective assistance of counsel, defendant must show that his trial counsel’s representation fell below an objective standard of reasonableness under prevailing professional norms, that but for his counsel’s error there is a reasonable probability that the results of his trial would have been different, and that the proceedings were fundamentally unfair or unreliable. *People v Toma*, 462 Mich 281, 302-303;

613 NW2d 694 (2000). Because the prosecutor's comments were harmless and did not affect substantial rights, defendant's claim of ineffective assistance of counsel must also fail.

Next, defendant argues that the trial court demonstrated bias during its questioning of one of the prosecution's witness, Police Investigator James Blanks. After the parties concluded their questioning of Investigator Blanks, the trial court queried the witness about the capabilities of guns of different calibers and the likelihood that a bullet shot in the air would fall and strike someone in the buttocks. Neither party had broached this area of inquiry with the witness.

A criminal defendant is entitled to a "neutral and detached magistrate." *People v Cheeks*, 216 Mich App 470, 480; 549 NW2d 584 (1996) (citation omitted). To demonstrate bias, a party "must overcome a heavy presumption of judicial impartiality." *People v Wells*, 238 Mich App 383, 391; 605 NW2d 374 (1999). When questioning a witness, a trial court should ensure that the "questions are not intimidating, argumentative, prejudicial, unfair, or partial." *Cheeks, supra* at 480. Further, a trial court has wide discretion to "clarify testimony or elicit additional relevant information." *Id.* In this instance, we find the trial court's questioning of the witness provided nothing relevant and did not serve to clarify testimony already explored by counsel. As such, although it was clearly within the prerogative of the trial court to engage in questioning the witness we generally admonish the trial court to exercise restraint in interjecting itself unnecessarily into the proceedings and simply permit the attorneys to try their own case. Because the trial court's questions were neither unfair nor prejudicial and the witness's remarks were vague and not particularly enlightening, it was unlikely that the court's questions served to unduly influence the jury.

Affirmed.

/s/ Michael J. Talbot
/s/ Richard A. Bandstra
/s/ Elizabeth L. Gleicher