STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 12, 2010
v	No. 291902 Wayne Circuit Court
ANTOINE DANEILL TRAMBLE, Defendant-Appellant.	LC No. 08-019071-FC

Before: GLEICHER, P.J., and ZAHRA and K.F. KELLY, JJ.

PER CURIAM.

A jury convicted defendant of first-degree premeditated murder, MCL 750.316(1)(a), being a felon in possession of a firearm, MCL 750.224f, carrying a concealed weapon (CCW), MCL 750.227, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant as a third habitual offender, MCL 769.11, to concurrent terms of life in prison without parole for the first-degree murder conviction and 34 to 120 months in prison for the felon in possession and CCW convictions, and a consecutive two-year term for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant stood trial for the April 14, 2008 shooting death of Lorenzo Pertee, which occurred outside 18053 Bradford Street in Detroit. Several friends and relatives had gathered at 18053 Bradford to play cards and dominoes, drink alcohol, smoke marijuana, and listen to music, as the group had done previously on several occasions. Some trial evidence established that the victim had insulted defendant in front of the other guests, including defendant's girlfriend. The testimony of several witnesses at trial reflected that defendant left the gathering before the victim, defendant retrieved a revolver from his van, and minutes later defendant shot the victim after he had left the house and headed to his car. A medical examiner described that the victim sustained four gunshot entrance wounds in his back, and another entrance wound to one of his shoulders.

I. SUFFICIENCY OF EVIDENCE

We first will address defendant's challenge to the sufficiency of the evidence supporting his first-degree murder conviction. Defendant specifically contests the adequacy of proof that he intended to kill the victim and that he premeditated and deliberated the killing of the victim. When reviewing the sufficiency of the evidence in a criminal case, we must determine "whether the evidence, viewed in a light most favorable to the people, would warrant a reasonable juror in

finding guilt beyond a reasonable doubt." *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000).

> The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict. The scope of review is the same whether the evidence is direct or circumstantial. Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime. [*Id*. at 400 (internal quotation omitted).]

"Because it is difficult to prove an actor's state of mind, only minimal circumstantial evidence is required." *People v McGhee*, 268 Mich App 600, 623; 709 NW2d 595 (2005).

To convict a defendant of first-degree premeditated murder, MCL 750.316(1)(a), the prosecutor must establish that the defendant intentionally killed the victim and that the defendant premeditated and deliberated the act of murder. *People v Kelly*, 231 Mich App 627, 642; 588 NW2d 480 (1998). Premeditation and deliberation require sufficient time to permit the defendant to take a second look. *Id*. Inferences of premeditation and deliberation may arise from evidence of (1) the prior relationship between the defendant and the victim, (2) the defendant's actions before the murder, (3) the circumstances of the killing itself, including the type of weapon used and the location of the wounds inflicted, and (4) the defendant's conduct after the murder. *People v Abraham*, 234 Mich App 640, 656; 599 NW2d 736 (1999); *People v Berry (On Remand)*, 198 Mich App 123, 128; 497 NW2d 202 (1993).

At the time of the April 14, 2008 shooting at 18053 Bradford Street, the victim and defendant shared a prior relationship to the extent that they drank and played dominoes together over the course of a few hours that evening, and may have attended a gathering together at some point previously. Larry Ward, who resided at 18053 Bradford Street, testified that within an hour or two before the shooting, the victim had performed a rap, and that when defendant expressed an interest in "get[ting] down with y'all," the victim replied, "[W]e don't let bums sign up on our label[]." As defendant left the house within an hour or two later, he expressed in a "mean" tone of voice to Nashanda Ivory, who also lived at 18053 Bradford Street, "[Y]'all be moving up off this mother f***er today, and I'll be riding off in that n****r car," which Ivory interpreted as a threat "to do something to the house" and the victim's car. Multiple witnesses estimated that defendant waited outside in or near his van for 10 to 20 minutes or more for the victim to leave. Darryl Foster, who had parked behind defendant's van earlier that evening, recalled that he engaged defendant in discussion in the back of defendant's van, and that when the victim walked outside and headed toward his car defendant removed a revolver from a brown bag and placed it in his waistband. The victim got inside his car, but got back out very shortly thereafter and began walking toward the house; Foster described at trial that he saw the victim's and defendant's "lips moving" at some point after the victim left the house, but Foster denied hearing any discussion or yelling. The testimony of Foster and Ja'net Laston, the victim's cousin, reflected that defendant intercepted the victim, pulled the gun from his waistband, began firing at the victim, and continued firing at the victim as he tried to flee up the block on foot. The evidence agreed that the victim never possessed a weapon. After Ward heard gunshots, he ran outside to confront defendant, who told Ward "my mother-f***ing cousin talk too much," pointed the gun at Ward, and pulled the empty gun's trigger a couple times before running away.

The medical examiner confirmed that the victim had five gunshot wounds, four of which had entered his back.

Viewed in the light most favorable to the prosecution, the evidence that (1) the victim had insulted defendant, (2) defendant waited outside 18053 Bradford Street for the victim to leave the house, (3) when the victim came outside defendant retrieved his revolver, intercepted the victim, commenced firing at the victim and then emptied the revolver in the victim's back as he fled, (4) defendant told Ward the victim talked too much, and (5) defendant fled the scene, constituted an ample foundation for the jury's reasonable finding beyond a reasonable doubt that defendant intended to kill the victim and premeditated and deliberated the victim's murder. With respect to defendant's complaint that the trial testimony contained many inconsistencies, our review of the record reveals that the witnesses agreed or their testimony remained consistent concerning most of the basic aspects of the April 14, 2008 shooting. In any event, to the extent that inconsistencies existed among the trial witnesses or between the witnesses' trial testimony and their prior statements, we will not revisit the jury's weighing of the testimony and credibility determinations. *Nowack*, 462 Mich at 400; *People v Elkhoja*, 251 Mich App 417, 442; 651 NW2d 408 (2002), vacated in part on other grounds 467 Mich 916 (2003).

II. PROSECUTORIAL MISCONDUCT

Defendant additionally maintains that the prosecutor engaged in several instances of misconduct at his trial.

> Prosecutorial misconduct issues are decided case by case, and the reviewing court must examine the pertinent portion of the record and evaluate a prosecutor's remarks in context. Prosecutors may not make a statement of fact to the jury that is unsupported by the evidence, but they are free to argue the evidence and all reasonable inferences arising from it as they relate to the theory of the case. Prosecutorial comments must be read as a whole and evaluated in light of defense arguments and the relationship they bear to the evidence admitted at trial. [*People v Schutte*, 240 Mich App 713, 721; 613 NW2d 370 (2000), criticized on other grounds in *Crawford v Washington*, 541 US 36; 124 S Ct 1354; 158 L Ed 2d 177 (2004).]

This Court reviews alleged instances of prosecutorial misconduct in context to determine whether the defendant received a fair and impartial trial. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001).

In this case, defendant did not preserve at trial any of the claims of prosecutorial misconduct that he raises on appeal. *People v Unger*, 278 Mich App 210, 235; 749 NW2d 272 (2008). Appellate review of improper remarks by the prosecutor is generally precluded absent an objection by defense counsel because a failure to object deprives the trial court of an opportunity to cure the alleged error. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). This Court reviews unpreserved claims of prosecutorial misconduct only for plain error that affected the defendant's substantial rights. *Unger*, 278 Mich App at 235; *Schutte*, 240 Mich App at 720. A forfeited plain error warrants reversal "only when plain error resulted in the conviction of an actually innocent defendant or seriously affected the fairness, integrity, or

public reputation of judicial proceedings." *Unger*, 278 Mich App at 235 (internal quotation omitted).

A

Defendant initially characterizes as improper prosecutorial vouching for state witnesses the following portion of the prosecutor's closing argument:

> *When you look at the state of a person when they're that traumatized and they're that upset it's very unlikely that those folks are lying*. Think about it. This is not an example of someone who is talked to hours later who's had a chance to sit down [and] in a very calm calculated fashion thinks about what they're saying.
>
> These are people at their rawest moment and their most honest moments. These are people who tell it like it is because the state they're in doesn't let them do anything but that and that's the state that Larry Ward was in when he told the officers that [defendant] killed [the victim], that [defendant] said, your cousin talks too much.
>
> That's the state that Ja'net Laston was in when she told the police she saw . . . Defendant pull that gun out, fire multiple times and [the victim] dropped in the street and was dead. [Emphasis added.]

Contrary to defendant's contention, the prosecutor in no way suggested that she had any "special knowledge of the witnesses' truthfulness." *People v Seals*, 285 Mich App 1, 22; 776 NW2d 314 (2009), citing *People v Bahoda*, 448 Mich 261, 276; 531 NW2d 659 (1995). Instead, the prosecutor properly argued on the basis of the trial testimony that the witnesses who observed or were present at the time of the April 14, 2008 shooting were worthy of belief. *Seals*, 285 Mich App at 22 ("[T]he prosecutor may argue from the facts that a witness should be believed.") (internal quotation omitted); *People v Thomas*, 260 Mich App 450, 455; 678 NW2d 631 (2004) ("[A] prosecutor may comment on his own witnesses' credibility during closing argument . . . ."). The witnesses themselves had recounted at trial their presence when the traumatic shooting took place, and several police officers testified at trial about out-of-court statements made by the witnesses shortly after the shooting and their agitated states at the time they made their statements. In summary, the prosecutor engaged in no improper vouching.

B

Defendant next criticizes as prosecutorial attempts "to lessen the burden of proof" the following portions of the prosecutor's opening statement and closing argument:

> Now, ladies and gentlemen, as we are not machines, we are not robots, I expect that you will hear some slight inconsistencies between the witnesses' testimony. That's not unusual. People see things differently and people hear things differently depending on where they're standing, what they're looking at, and what keeps their attention. . . . [Opening statement.]

> They describe the same event, ladies and gentlemen. They describe the same event and I submit to you, ladies and gentlemen, are their inconsistencies in [the] testimony? Sure. Are there little nuances or little things that are different between each person's testimony? Absolutely.
>
> And I'd expect nothing but that, ladies and gentlemen, cause people aren't robots. People don't process information the exact same way. People aren't looking in the same direction as each other at all times so I would ask you not to be disturbed by that because I'll tell you this, ladies and gentlemen.
>
> The evidence again from that witness stand places the Defendant with that gun in his hand pulling it out and firing multiple times. . . . [Closing argument.]

Nothing akin to improper burden shifting appears in the challenged passages; nowhere does the prosecutor insinuate that the defense must prove anything or try to minimize her own burden of proof. Most of the points referenced in the prosecutor's opening statement relating to potential inconsistencies in witness testimony and possible reasons therefor appear in CJI2d 3.4 regarding witness credibility, which the trial court read to the jury before deliberations commenced. And the prosecutor's closing argument simply summarized the nature of the sometimes inconsistent witness testimony given at trial, properly suggesting that on the basis of the trial record, irrespective of any inconsistencies, the evidence agreed that defendant was the lone individual who possessed a firearm on the evening of April 14, 2008. *Schutte*, 240 Mich App at 721. We detect no prosecutorial misconduct in the challenged argument.

C

Defendant also characterizes the following, italicized prosecutor comments during closing argument as improper burden shifting:

> You heard testimony that some fingerprints were taken off the bottle downstairs and I submit to you, . . . as one of the witnesses testified, I believe it's Larry Ward, when he indicated that everybody was picking up that bottle and drinking out of it. So would it be any big surprise if you found prints, didn't find prints when that many people were handling that bottle?
>
> But again that's where people get distracted or are lead [sic] to believe that every case has some mystery C.S.I. hair fibers, blood spatters, things like [that] . . . . That's not reality. That's TV. When we talk about a DNA sample about one of the cups down here, . . . as you heard from Officer Smith, DNA can be used to determine the identity of someone.
>
> You respond to a crime scene and there's blood samples there or something that allows you to take a DNA sample and you test it to find out the identity of that person. There's no question about the identity of the individual who committed this murder, no question, but again, DNA is very hot and very news worthy to throw out there.

> *I submit to you, ladies and gentlemen, as thoughtful and thinking folks, don't be distracted by things that don't apply to this case. There's no question about trying to narrow down who was there. No question about who committed the murder.*
>
> *So fingerprints and DNA I submit you can talk all day long about what's [not] there because it will give you a chance to not look at what is there. What is there is the strength of the testimony of Miss Ivory, Mr. Ward, Miss Laston and Mr. Foster.* [Emphasis added.]

The entirety of this passage consists of proper prosecutorial comment on the basis of the trial record. In light of (1) the consistent eyewitness identifications of defendant at trial as the shooter, and (2) police officer testimony at trial that the police had dusted for fingerprints a liquor bottle found in the basement of 18053 Bradford Street and took a swab from defendant's cup for deoxyribonucleic acid (DNA) analysis,[1] the prosecutor properly urged the jury to focus on the eyewitness testimony. *Seals*, 285 Mich App at 22 ("Generally, prosecutors are accorded great latitude regarding their arguments, and are free to argue the evidence and all reasonable inferences from the evidence as they relate to their theory of the case."); *Schutte*, 240 Mich App at 721. This passage similarly reveals no reasonable inference that, as defendant asserts, the prosecutor has made some effort to "ignor[e] the standard for a guilty verdict of beyond a reasonable doubt." Consequently, we again detect no prosecutorial misconduct. Moreover, the trial court instructed the jury that its "instructions on the law" governed the jury's evaluation of the evidence, that defendant's presumption of innocence "continues through trial and entitles . . . Defendant to a verdict of not guilty unless you are satisfied beyond a reasonable doubt that he is guilty," and that "[t]he prosecutor must prove each element of the crime[s] beyond a reasonable doubt. . . . Defendant is not required to prove his innocence or to do anything. If you find that the prosecutor has not proven every element beyond a reasonable doubt then you must find . . . Defendant not guilty." See *Unger*, 278 Mich App at 235 (noting that "jurors are presumed to follow their instructions").

D

Defendant lastly argues that the prosecutor engaged in misconduct when she made opening statement and closing argument references to facts not of record concerning defendant's departure from the scene in his van. However, our reading of the record does not substantiate defendant's position that the prosecutor "informed the jury that the Defendant drove away and/or was driven away from the scene of the shooting by his girlfriend." Instead, the record shows that the prosecutor in her opening statement mentioned that after the shooting "Defendant took off running," and in her closing argument similarly noted that "after accomplishing what he had set out to do, [defendant] turns and runs down the street." At trial, several witnesses, including Ward, Ivory and Laston, agreed that after the shooting, defendant fled on foot toward a side street, and that defendant's girlfriend had driven away defendant's van at the time of the shooting. And Ward explained at trial that he had pursued defendant down Bradford Street, but

[1] The trial record does not refer to whether any testing occurred.

when Ward reached the first intersection, he no longer saw defendant, although Ward did see "the same van that [defendant's] girlfriend pulled off in." The witness testimony thus gives rise to a reasonable inference that defendant got into the van driven by his girlfriend within minutes after the shooting. The prosecutor accurately summarized the trial testimony about defendant's departure in her rebuttal closing argument. Because the prosecutor accurately summarized the trial testimony in this regard, no prosecutorial misconduct occurred. *Schutte*, 240 Mich App at 721.[2]

III. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant finally contends that his trial counsel was ineffective for "fail[ing] to object to several different instances of prosecutorial misconduct." However, as we have discussed, defendant has not shown that any prosecutorial misconduct tainted his trial. See *Thomas*, 260 Mich App at 457 ("Counsel is not ineffective for failing to make a futile objection."). Although defendant insinuates that his counsel made other "trial errors and omissions," he has essentially abandoned any further claims of error by offering no additional argument or specific detail with respect to the purported ineffective assistance supplied by his counsel. *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999); *Kelly*, 231 Mich App at 640-641.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Brian K. Zahra
/s/ Kirsten Frank Kelly

[2] Because defendant has failed to demonstrate any single instance of prosecutorial misconduct, we have no cumulative effect of prosecutorial misconduct to consider.