

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
November 28, 2017

v

BOBBY DALE KEYES also known as BOBBI  
KEYES,

No. 334689  
Muskegon Circuit Court  
LC No. 16-0000529-FH

Defendant-Appellant.

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

KRIS ANTHONY KEYES,

No. 334708  
Muskegon Circuit Court  
LC No. 16-000530-FH

Defendant-Appellant.

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Before: HOEKSTRA, P.J., and STEPHENS and SHAPIRO, JJ.

PER CURIAM.

Defendants Bobby Dale Keyes (Bobby) and Kris Anthony Keyes (Kris) appeal as of right their jury trial convictions of assault with intent to commit great bodily harm less than murder (AWIGBH), MCL 750.84; felon in possession of a firearm (felon-in-possession), MCL 750.224f; and two counts possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Bobby was sentenced, as a third-offense habitual offender, MCL 769.11, and Kris as a second-offense habitual offender, MCL 769.10, to concurrent terms of 80 months to 17 years (80 to 15 for Kris) for the AWIGBH conviction and 2 years to 7 years and 6 months for the possession of firearms conviction. Both were also sentenced to consecutive two years for each felony-firearm count. Defendants initially brought three claims of error, but withdrew their claim that the jury was not sworn at oral argument. We reject the remaining claims of error and affirm.

I. BACKGROUND

On December 20, 2015, Demarcus Jones broke up with his girlfriend Machelie Wirick and moved back into the home of his mother Darlene Jones. Later that day, Machelie came to the home to argue with Demarcus about a television. Machelie's uncle, defendant Bobby Keyes, also came to calm Machelie down, and the two eventually left. Machelie later called Demarcus and accused him of taking some marijuana from her purse, which he denied. At about 9:30 p.m. several males, two of whom were identified as Bobby and Kris, entered the enclosed porch door where Demarcus and his cousin Cornelius Ivy were sitting. Bobby confronted Demarcus who admittedly had been drinking all day about the marijuana. Bobby dragged Demarcus from the porch and hit him with a hard object that Demarcus stated felt like a gun. Bobby then shot at Demarcus three times.

Demarcus initially identified Bobby out of photo lineup and told Detective Steven Winston that Bobby was the one who shot him. Pre-trial, he told a defense investigator that he was mistaken about who shot him. At trial, Demarcus confirmed on direct examination that he was sure about the identity of his shooter, but later appeared to recant his identification, stating:

*Q.* And why is it you think it was Bobby as opposed to the third guy?

*A.* Cause we had an incident earlier, I guess.

*Q.* So could it have been the third guy?

*A.* I don't know. I don't, I can't even tell you.

*Q.* You don't know [sic] if it could have or not have been

*A.* No.

*Q.* - or you don't know if it was?

*A.* I don't know if it was. I just think it was Bobby that's all.

*Q.* Right. But my question is could it have been? Is there a possibility that it could've been that third guy?

*A.* I don't think so.

*Q.* You don't think so? So, why is that you informed my investigator that you didn't think it was Bobby?

*A.* I mean, I was just going back and forth. I was just weighing my options out. Most people saying it was and this and that. I'd been drinking all day so I'm just going back and forth with 'em.

*Q.* OK. So you said you're going back and forth. Most people telling you it was?

*A.* Uh huh. I saying it was too cause of the incident we had earlier.

Demarcus testified further that he was forced to be in court by subpoena and that he was threatened he “would be charged with perjury and . . . a probation violation.” The court excused the jury and conducted a hearing on the issue of whether Demarcus’s testimony was the product of coercion. Demarcus told the court that the Friday before he was scheduled to testify, his probation agent called him and told him he could be charged with perjury. Demarcus went to his agent’s office where he eventually met with the prosecutor and Detectives Winston and Maat, and told them that he did not want to testify. He again was informed that if he perjured himself, the charge would be a violation of his probation. Demarcus testified, “I thought it was Bobby so I can’t be perjuring myself. I thought it was Bobby and then I told her I thought anybody else saying it was, it was him too. . . . But from the gate I told him it was Bobby.” Demarcus testified that no one ever told him what to say, just to tell the truth. The jury returned and the following testimony was elicited by Bobby’s attorney:

*Q.* Prior to appearing here for your testimony today you had other meetings with the detective and prosecutors office, correct?

*A.* Yes, sir.

*Q.* And in those other meetings you were informed by one of the assistant prosecutors that if your testimony changed you could get perjury charges?

*A.* Yes, sir.

*Q.* And they informed you that they had just had someone sentenced, Michigan Mel sentenced to nine years in prison?

*A.* No, I guess it’s some, some dude who’s involved in the case and changed (undistinguishable).

*Q.* Oh, that was the name of the case? Michigan Mel case?

*A.* Yeah.

*Q.* And when his testimony changed?

*A.* They gave him nine years. . . .

Two other persons identified both Bobby and Kris as assailants. The first was Cornelius, the other victim, who had difficulty remembering the details of the evening of December 20, 2015, because he was shot in the top of his head that night and thereafter, diagnosed with post-concussion syndrome. The court declared that Cornelius’s memory loss was valid, that he was unavailable under MRE 804, and that his preliminary exam transcript testimony would be read to the jurors in response to the prosecutor’s motion at trial that Cornelius be declared unavailable. The salient points of the preliminary examination testimony were that Cornelius made an in-court identification of Kris as his assailant and as one of the men with Bobby on the day of the assault. Cornelius had also identified Kris from a photo lineup. The second person who identified both defendants as assailants was Demarcus’s mother, who was sitting on her couch and watching through a glass door to the porch when four men approached the front porch where

Demarcus and Cornelius were sitting. Darlene identified both defendants in court as two of the four men and testified that she had seen them both before from growing up in the same neighborhood. She heard Bobby tell Kris to get Cornelius and saw Kris hold Cornelius down as Bobby dragged Demarcus out of his chair and off the porch. She heard three or four gunshots and saw Cornelius enter the house with blood all over his face. She found Demarcus outside lying on the ground bleeding. She testified that while Demarcus was on the ground, he told her that Bobby shot him.<sup>1</sup> She admitted that she would not name one of the four men because she knew that person was on parole and she did not want him to get in trouble however, she testified that if that man had been the one who shot her son, she would not be withholding his name.

## II. SUFFICIENCY OF THE EVIDENCE

Both defendants argue that the evidence against them was insufficient. We disagree.

“In challenges to the sufficiency of the evidence, this Court reviews the record evidence de novo in the light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt.” *People v Roper*, 286 Mich App 77, 83; 777 NW2d 483 (2009). “Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.” *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). “It is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences.” *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). “[W]e must resolve all conflicts in favor of the prosecution.” *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

There is clearly sufficient evidence to support the jury’s verdict in this case. We agree that there was testimony that was inconsistent and which challenged the veracity of each prosecution witness. There was some testimony that Demarcus had been drinking all day and that Cornelius had also, consumed alcohol prior to the assault. We also agree that Darlene admitted that she would not identify one of the persons at the scene of the assault. Demarcus did give equivocating testimony as to the identity of his assailant and the testimony regarding the arguably coercive meeting with the detectives and prosecutor is most concerning. However, Demarcus made an initial identification of Bobby as his assailant immediately after he was shot. Additionally, Darlene and Cornelius gave testimony that was consistent concerning not only identification but also the sequence of events leading up to the gunshots. Most importantly, the jury was made aware of the witnesses’ inconsistencies, potentially impaired observations, and other testimonial weaknesses, and elected to find the testimony regarding the identity and activity of both defendants to be credible.

## III. PROSECUTORIAL MISCONDUCT

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<sup>1</sup> This statement was challenged as hearsay and overruled by the court because it found the statement to be an excited utterance. Darlene also testified that Demarcus said “Bud” shot him, but identified Bobby as being Bud. Further, there is no challenge to the reference to Bud as being any other person but defendant Bobby.

Both defendants argue that the prosecutor engaged in misconduct. Bobby asserts that the prosecutor appealed to the sympathy of the jury by crying and Kris argues that the prosecutor intimidated a witness. Both arguments are unavailing.

We review preserved claims of prosecutorial misconduct de novo. *People v Abraham*, 256 Mich App 265, 272; 662 NW2d 836 (2003). Unpreserved claims are reviewed for plain error affecting substantial rights. *People v Schutte*, 240 Mich App 713, 720; 613 NW2d 370 (2000). “The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. Prosecutorial misconduct issues are decided on a case-by-case basis, and the reviewing court must examine the record and evaluate a prosecutor’s remarks in context.” *Brown*, 294 Mich App at 382-383; (internal citations omitted). “No error requiring reversal will be found if the prejudicial effect of the prosecutor’s comments could have been cured by a timely instruction.” *Schutte*, 240 Mich App at 721.

#### A. CRYING

“In order to preserve a claim of prosecutorial misconduct for appellate review, a defendant must have timely and specifically objected below, unless objection could not have cured the error.” *People v Brown*, 294 Mich App 377, 382; 811 NW2d 531 (2011). Bobby acknowledges he did not object to the prosecutor’s alleged crying during opening statement.

Long after the alleged offensive conduct, Bobby made a statement on the record during his sentencing that the prosecutor wept during opening statement. This is therefore at best unpreserved error. The court, contrary to Bobby’s argument, did not implicitly or explicitly affirm his statement. Nor have we found any record evidence of these tears. The court did give the standard instruction that the lawyers’ statements and arguments are not evidence and juries are presumed to adhere to judicial instruction. *People v Unger*, 278 Mich App 210, 235; 749 NW2d 272 (2008). Bobby argues that the prosecutor’s tears were especially potent since the jury was majority female. We do not find that the jury’s gender makeup was significant in this case. Nor was this case, despite its devastating impact on the victims, one that was tinged with emotion. Moreover, given the strength of the proofs against both defendants any claimed error did not affect the outcome of this case in any significant way.

#### B. WITNESS INTIMIDATION

Kris’s claim of coercion was preserved. The testimony taken raises consensus about the manner in which the victim witness, Demarcus was treated. When he initially wavered as to his identification, the investigator’s warning of the consequences of perjury was not inappropriate. *People v Layher*, 238 Mich App 573, 587; 607 NW2d 91 (1999). The second meeting with two detectives and the prosecutor, where the consequences of perjury were re-emphasized in an emphatic manner replete with the length of sentence allegedly given another parole violator, is concerning. However, we cannot find that the recitation of objectively true information, that perjury is a violation of parole, constitutes witness intimidation. Nor can we find prejudice to Kris. The jury was made aware of the detectives’ and prosecutor’s actions. Two other witnesses identified Kris and the warning given was not about Kris’s identification but that of his co-defendant. Most importantly, Demarcus’s most impactful statement of identification concerned Bobby, and was made immediately after being shot, lying, bleeding on the ground.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Cynthia Diane Stephens  
/s/ Douglas B. Shapiro