

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
December 13, 2012

v

JEFFREY SCOTT HAYNES,

Defendant-Appellant.

No. 308289
Calhoun Circuit Court
LC No. 2011-003023-FH

Before: TALBOT, P.J., and MARKEY and RIORDAN, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of first-degree home invasion, MCL 750.110a(2). Defendant was sentenced as a fourth habitual offender, MCL 769.12, to 200 to 520 months' imprisonment. We affirm.

I. FACTUAL BACKGROUND

After running some errands, a mother from Springfield, Michigan, entered her home and found defendant in her kitchen. Before leaving that day, she had locked the house. When she saw defendant, he was going through her family's possessions. The mother yelled out in surprise and informed her husband over her cellular phone that there was a man in the home. She then ran out of the house, entered her vehicle, and drove a couple of feet away. In the meantime, her husband called the police.

When the police arrived at the victim's house, they discovered the front door was opened and an egress window was opened as well. The kitchen was in disarray, and a duffle bag was located on the floor with miscellaneous items placed inside. The victim later identified defendant in a lineup as the man she saw in her kitchen. Defendant was convicted of first-degree home invasion. Defendant now appeals.

II. STANDARD OF REVIEW

Defendant argues that the prosecutor made improper statements during closing argument that impermissibly shifted the burden of proof. Because defendant failed to make a timely and contemporaneous objection to the alleged misconduct, this issue is unpreserved. *People v*

Callon, 256 Mich App 312, 329; 662 NW2d 501 (2003). Defendant “must show a plain error that affected substantial rights, and the reviewing court should reverse only when the defendant is actually innocent or the error seriously affected the fairness, integrity, or public reputation of judicial proceedings.” *People v Parker*, 288 Mich App 500, 509; 795 NW2d 596 (2010). Substantial rights are affected when the defendant was prejudiced, meaning the error affected the outcome of the trial. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

III. PROSECUTORIAL MISCONDUCT

“Generally, [p]rosecutors are accorded great latitude regarding their arguments and conduct.” *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995) (internal quotations and citation omitted). “To determine if a prosecutor’s comments were improper, we evaluate the prosecutor’s remarks in context, in light of defense counsel’s arguments and the relationship of these comments to the admitted evidence.” *People v Seals*, 285 Mich App 1, 22; 776 NW2d 314 (2009). If “a timely objection and curative instruction could have alleviated any prejudicial effect of the improper prosecutorial statement, we cannot conclude that the error denied defendant a fair trial or that it affected the outcome of the proceedings.” *People v Unger*, 278 Mich App 210, 237; 749 NW2d 272 (2008).

However, the prosecutor is circumscribed in some respects during closing arguments. “A prosecutor may not imply in closing argument that the defendant must prove something or present a reasonable explanation for damaging evidence because such an argument tends to shift the burden of proof.” *People v Fyda*, 288 Mich App 446, 463-464; 793 NW2d 712 (2010). Defendant argues that the prosecution repeatedly and improperly commented that defense counsel was unable to prove there were any other suspects, which effectively shifted the burden of proof.

Even if the prosecutor improperly suggested that the burden of proof was on defendant, a curative instruction alleviated any minimal prejudicial effect. The trial court gave a jury instruction on the burden of proof, stating:

The defendant has not been required to prove his innocence in the course of this trial. He has not been required to present any witnesses or evidence. He has no burden to testify. . . .

The burden of proof is entirely upon the prosecution. If you find during your deliberations the Prosecutor has not proven every element of this offense beyond a reasonable doubt, then your verdict has got to be “not guilty.”

This instruction was echoed by the prosecutor in his rebuttal argument, informing the jury that defendant did not have to prove there were other possible suspects because defendant did not “have to present evidence and [the prosecution] never suggested that [defendant] did.” The trial court also instructed the jury that counsels’ arguments were not evidence. “Jurors are presumed to follow their instructions, and instructions are presumed to cure most errors.” *People v Abraham*, 256 Mich App 265, 279; 662 NW2d 836 (2003). Defendant has failed to show that any alleged error requires reversal.

IV. CONCLUSION

There was no prosecutorial misconduct requiring reversal. We affirm.

/s/ Michael J. Talbot

/s/ Jane E. Markey

/s/ Michael J. Riordan