

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
April 11, 2013

v

ROLANDO FLORES, JR.,

No. 309262
Oakland Circuit Court
LC No. 2011-238414-FC

Defendant-Appellant

Before: WILDER, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

A jury convicted defendant of first-degree felony murder, MCL 750.316(1)(b), arising from defendant’s participation in a home invasion, where the victim who was stabbed multiple times, died several months later. The trial court sentenced defendant to life imprisonment without the possibility of parole. Defendant appeals as of right, and we affirm.

Defendant argues that his conviction must be vacated because the evidence did not establish that the stab wounds the victim received during the home invasion proximately caused his death. We disagree.

A challenge to the sufficiency of the evidence is reviewed de novo and in a light most favorable to the prosecution to determine “whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.” *People v Cline*, 276 Mich App 634, 642; 741 NW2d 563 (2007). “All conflicts with regard to the evidence must be resolved in favor of the prosecution. Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime.” *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005) (internal citations omitted). Further, “[t]he scope of review is the same whether the evidence is direct or circumstantial.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). “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).

“In criminal jurisprudence, the causation element of an offense is generally comprised of two components: factual cause and proximate cause.” *People v Schaefer*, 473 Mich 418, 435; 703 NW2d 774 (2005), modified in part on other grounds in *People v Derror*, 475 Mich 316, 320, 333-334, 341-342; 715 NW2d 822 (2006).¹

For a defendant’s conduct to be regarded as a proximate cause, the victim’s injury must be a ‘direct and natural result’ of the defendant’s actions. In making this determination, it is necessary to examine whether there was an intervening cause that superseded the defendant’s conduct such that the causal link between the defendant’s conduct and the victim’s injury was broken. If an intervening cause did indeed *supersede* the defendant’s act as a legally significant causal factor, then the defendant’s conduct will not be deemed a proximate cause of the victim’s injury.

The standard by which to gauge whether an intervening cause supersedes, and thus severs the causal link, is generally one of reasonable foreseeability. For example, suppose that a defendant stabs a victim and the victim is then taken to a nearby hospital for treatment. If the physician is negligent in providing medical care to the victim and the victim later dies, the defendant is still considered to have proximately caused the victim’s death because it is reasonably foreseeable that negligent medical care might be provided. At the same time, *gross* negligence or intentional misconduct by a treating physician is not reasonably foreseeable, and would thus break the causal chain between the defendant and the victim. [*Id.* at 436-437 (emphasis in original, internal citations omitted).]

“[T]he mere consumption of alcohol by a victim does not automatically amount to a superseding cause or de facto gross negligence.” *People v Feezel*, 486 Mich 184, 202; 783 NW2d 67 (2010).

The victim’s daughter testified that before the offense in April 2010, the independent 56-year-old victim lived alone, shopped for his own groceries, paid his bills, frequently cared for his mother who lived nearby, “loved to work on” cars and lawnmowers, and “loved to cook out.” Dr. Jeffrey Mason, who saw the victim regularly beginning in 2005, similarly described that the victim could “shop and cook and do everything like that, activities of daily living.” Dr. Mason testified about the victim’s extensive hospitalizations between April 2010 and his placement in end-of-life care in December 2010, primarily due to the post-stabbing injection of bacteria into a hip joint, which by late April 2010 had turned untreatably septic. Dr. Mason also related that as of June 2010, the victim had severe pain and could no longer clean himself, walk, shop, or cook.

Forensic examiner Dr. Kanu Virani characterized the death as a homicide and opined that the “main factor” in the victim’s cause of death was the “multiple stab wound[s].” Dr. Virani also acknowledged that there were other “complications” that contributed to the victim’s death, which included “alveolar damage, pneumonia and blood loss.” Although Dr. Virani conceded

¹ *Derror* was subsequently overruled in *People v Feezel*, 486 Mich 184, 188; 783 NW2d 67 (2010).

that the victim's preexisting liver cirrhosis and chronic obstructive pulmonary disorder factored into his ultimate demise, he nonetheless characterized these conditions as causes *secondary* to the stabbing. Dr. Virani explained that the stabbing was the "initial point of everything happening in this case," which then "naturally or necessarily progressed" to pneumonia and death.

Concerning defendant's claim that the victim's use of alcohol and hydrocodone for pain relief played a role in his death, Dr. Virani's testimony belies this suggestion. Dr. Virani opined that alcohol consumption would not have had any effect on the alveolar damage unless the consumption somehow resulted in the person passing out, becoming unresponsive, and being unable to breathe. And while Dr. Virani acknowledged that a person who consumed "too much" hydrocodone would be affected in his ability to breathe, he subsequently confirmed that the quantity of hydrocodone that the victim received during his end-of-life care "had nothing to do with [his] cause of death."

We conclude that when viewing the above evidence in a light most favorable to the prosecution, a jury had sufficient evidence in order to find that the stabbing proximately caused the victim's death. The evidence, especially the testimony of Dr. Mason and Dr. Virani, was sufficient to enable the jury to find beyond a reasonable doubt that the victim's death was "a direct and natural result" of the multiple stab wounds inflicted by defendant or his accomplice. *Schaefer*, 473 Mich at 436. Therefore, defendant is not entitled to any relief.

Defendant further contends that reversal is required because the prosecutor improperly vouched for the testimony of Dr. Mason and Dr. Virani during closing argument, and that defense counsel was ineffective for failing to object to the prosecutor's misconduct. Because defendant did not object to the prosecutor's conduct at trial, his claim of prosecutorial misconduct is unpreserved and our review is limited to plain error affecting defendant's substantial rights. *People v Unger*, 278 Mich App 210, 235; 749 NW2d 272 (2008). Thus, reversal is necessary only if a timely instruction would have been inadequate to cure any defect. *People v Ackerman*, 257 Mich App 434, 449; 669 NW2d 818 (2003). And because defendant also failed to raise an ineffective assistance of counsel claim in the trial court, we limit our review of this claim "to the existing record." *People v Thomas*, 260 Mich App 450, 456; 678 NW2d 631 (2004).

"A prosecutor may not vouch for the credibility of his witnesses by suggesting that he has some special knowledge of the witnesses' truthfulness. However, the prosecutor may argue from the facts that a witness should be believed." *People v Seals*, 285 Mich App 1, 22; 776 NW2d 314 (2009) (internal quotations and citation omitted). "[A] prosecutor may comment on his own witnesses' credibility during closing argument, especially when there is conflicting evidence and the question of the defendant's guilt depends on which witnesses the jury believes." *Thomas*, 260 Mich App at 455.

Defendant claims that the prosecutor improperly vouched for Dr. Mason and Dr. Cirani when the prosecutor said the following during rebuttal argument:

Doctor Virani doesn't work for me. He doesn't work for the Waterford Police Department. He's got a statutory duty to sit in his office and when a body

comes in to determine whether somebody died of natural causes or died of homicide. There's no bias. You'll get an instruction on that. There's no reason he'd come here and tell you something that he didn't believe. There's no bias. He makes a call based upon his examination of internal organs as to what the cause of death is and an outward look as well as medical records. That is his determination.

Fact witness not an expert. I asked Doctor Mason . . . , did [the victim] ever recover from those injuries? No. Every time he came to the hospital he was septic. He was infected with bacteria. Gee, he's not the People's witness, he's just a guy working in the hospital that's a doctor. Treating physician, one of many. The [victim] was in and out of the hospital every other month, every other week. He was at hospice. He was at Rehabilitative Care and for one short period of time he lived by himself.

In reviewing the above comments, it is clear that at no point did the prosecutor suggest that he possessed some "special knowledge" of either Dr. Mason's or Dr. Virani's truthfulness. Instead, the prosecutor was permissibly arguing that, based on the evidence introduced to the jury, his witnesses lacked any reason to be biased or not credible. Moreover, even assuming that some impropriety existed in the prosecutor's rebuttal closing argument, the trial court's jury instructions that the parties' arguments do not constitute evidence and that the jury has the authority and obligation to ascertain the facts solely on the basis of the evidence were sufficient to cure any prejudice. *Unger*, 278 Mich App at 237-238.

Because the prosecutor did nothing inappropriate in commenting on the testimony of both Dr. Mason and Dr. Virani, defense counsel was not ineffective for failing to object to the prosecutor's argument. See *Thomas*, 260 Mich App at 457 ("Counsel is not ineffective for failing to make a futile objection.").

Affirmed.

/s/ Kurtis T. Wilder
/s/ Cynthia Diane Stephens
/s/ Amy Ronayne Krause