

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

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
May 23, 2013

v

MARTELL LAMAR HARPER,  
  
Defendant-Appellant.

No. 309321  
Wayne Circuit Court  
LC No. 11-012059-FC

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Before: CAVANAGH, P.J., and SAAD and RIORDAN, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of second-degree murder, MCL 750.317, discharging a weapon from a motor vehicle, MCL 750.234a, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. We affirm.

On October 28, 2011, defendant's 14-year-old nephew told him that he had been shot at by someone defendant knew, the decedent. Defendant also believed that the decedent had broken into his home and stole two of defendant's guns. Defendant proceeded to drive to the decedent's aunt's home with his nephew. When he arrived, the decedent's vehicle was in the driveway. Witness testimony included that defendant fired several gunshots in the direction of the vehicle and house while driving by and then turned his vehicle around and fired additional gunshots in the same direction. Defendant testified that he went to the house to get the license plate number from the vehicle in the driveway, but had a confrontation with someone at the house so he left. When he returned a short time later, the decedent pointed a gun at him so defendant fired gunshots and left. Ultimately, the decedent was shot in the head and was found sitting in the driver's seat of his vehicle that was parked in the driveway. That vehicle had evidence of several gunshot strikes. Defendant was charged with first-degree premeditated murder, discharging a weapon from a motor vehicle, and felony-firearm. Following a jury trial he was convicted of second-degree murder, as well as the other charges.

On appeal, defendant argues that the evidence was insufficient to support the charge of first-degree murder; thus, he was denied due process when the jury was permitted to consider the charge. After reviewing this unpreserved issue for plain error, we disagree. See *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999).

First-degree murder is the intentional killing of a human with premeditation and deliberation. *People v Bennett*, 290 Mich App 465, 472; 802 NW2d 627 (2010). Defendant

argues that there was insufficient evidence of premeditation. “Premeditation and deliberation require sufficient time to allow the defendant to take a second look.” *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995).

Though not exclusive, factors that may be considered to establish premeditation include the following: (1) the previous relationship between the defendant and the victim; (2) the defendant’s actions before and after the crime; and (3) the circumstances of the killing itself, including the weapon used and the location of the wounds inflicted. Premeditation and deliberation may be inferred from all the facts and circumstances, but the inferences must have support in the record and cannot be arrived at by mere speculation. [*People v Plummer*, 229 Mich App 293, 300–301; 581 NW2d 753 (1998) (citations omitted).]

In this case, the evidence was sufficient to submit the charge of first-degree premeditated murder to the jury. There was evidence that defendant had a standing feud with the decedent, believing that the decedent had broken into his home and stolen defendant’s guns. After his nephew claimed to have been shot at by the decedent, defendant drove to a location where the decedent may have been and defendant had a loaded gun. According to eyewitness testimony, defendant proceeded to fire several gunshots from his vehicle toward the house and the decedent’s vehicle as he was driving by the area. Defendant then turned his car around and drove past the house again, firing several more gunshots. The decedent was fatally shot in the head and was found sitting in the driver’s seat of his vehicle. The decedent’s vehicle was riddled with several gunshot strikes. In light of this evidence, it is clear that the jury was properly permitted to consider the charge of first-degree premeditated murder; thus, defendant’s argument is without merit.

Next, defendant argues in his Standard 4 Brief that the prosecutor committed misconduct during closing and rebuttal arguments which denied him a fair trial. After review of this unpreserved claim for plain error, we disagree. See *People v Aldrich*, 246 Mich App 101, 110; 631 NW2d 67 (2001), quoting *Carines*, 460 Mich at 752-753.

During closing argument the prosecutor stated:

[Defendant] works as a security guard at a school. He’s trained in the use of weapons. He even owns an AK-47. Why an AK-47? Unrelated to this case, but he has weapons. He knows how to use weapons and then he’s involved in a shooting . . . .

Then, during rebuttal argument, the prosecutor stated: “[The victim] was in the van and he was executed and assassinated by this Defendant.” Defendant claims that these statements referencing defendant’s ownership of an AK-47 and the purported fact that the decedent was “assassinated” by defendant were designed to inflame the jury and “implied that defendant was an assassin who would terrorize, based on his choice of a legally possessed firearm that had nothing to do with the evidence of this particular case.” We disagree.

Claims of prosecutorial misconduct are decided on a case-by-case basis after reviewing the record and evaluating the challenged remarks in context and in light of the evidence to

determine if a defendant received fair trial. *People v Dobek*, 274 Mich App 58, 63-64; 732 NW2d 546 (2007). Although prosecutors may not make statements of fact not supported by the evidence, *People v Stanaway*, 446 Mich 643, 686; 521 NW2d 557 (1994), they can argue the evidence and reasonable inferences arising therefrom as relates to their theories of the case. *People v Unger (On Remand)*, 278 Mich App 210, 236; 749 NW2d 272 (2008). Prosecutors are not required to confine their arguments to the blandest possible terms, may use “hard language” when supported by the evidence, and are typically afforded great latitude regarding their arguments and conduct at trial. *Id.* at 236; *Dobek*, 274 Mich App at 66; *People v Ullah*, 216 Mich App 669, 678; 550 NW2d 568 (1996). In fact, “emotional language” is “an important weapon in counsel’s forensic arsenal.” *Id.* at 679.

Here, the evidence included that defendant was very familiar with guns, had been trained in their use, and had owned several guns, including an AK-47. Accordingly, the prosecutor’s reference to defendant owning an AK-47, as well as his training in and use of weapons was supported by the evidence. Further, the prosecutor theorized that defendant shot the decedent because his AK-47 had been stolen and defendant believed that the decedent had stolen that gun. Accordingly, the prosecutor’s closing argument statements did not constitute misconduct. See *Unger (On Remand)*, 278 Mich App at 236; *Dobek*, 274 Mich App at 66. Further, the evidence included that defendant shot at the decedent’s vehicle numerous times and the decedent was found with a gunshot wound to his head, sitting in the driver’s seat of his vehicle. The decedent’s vehicle was riddled with gunshot strikes. While the prosecutor’s characterization of the shooting as an “assassination” may be considered hard or emotional language, in light of the evidence, it did not constitute plain error affecting defendant’s substantial rights. See *Dobek*, 274 Mich App at 66; *Ullah*, 216 Mich App at 678-679.

Finally, defendant argues in his Standard 4 Brief that the prosecutor committed misconduct when defendant was asked during cross-examination why he never advised the police that he was subjected to gunfire at the decedent’s aunt’s house before defendant fired any gunshots. We disagree.

At trial defendant testified on direct examination that when he first arrived at the decedent’s aunt’s house to secure the license plate number of the decedent’s van someone fired gunshots into the air and defendant left. When he later returned to secure the license plate number, the decedent pointed a gun at him so defendant fired several shots at him. During cross-examination the prosecutor asked defendant if he called 911 after the person fired gunshots into the air the first time defendant was at the house and defendant replied in the negative. The prosecutor asked if defendant called 911 or notified police that the decedent pointed a gun at him and that defendant then fired several shots in return as he was required to do as a concealed weapons permit holder and defendant replied in the negative. The prosecutor also asked defendant if he ever notified the police of these events at any time after the shooting and defendant replied in the negative.

The questions by the prosecutor were clearly designed to illustrate that, if defendant had been the “victim” of a crime as he claimed at trial, he would have notified the police. As in the case of *People v Collier*, 426 Mich 23; 393 NW2d 346 (1986), the prosecutor’s questions alluded to defendant’s silence before contact with police, not after his arrest. See *id.* at 31. As in the *Collier* case, here defendant claimed he was a victim, not a perpetrator, and the prosecutor was

merely pointing out that it would be natural and expected for defendant to have reported the alleged criminal acts of the decedent to police because defendant knew the decedent's identity and the location of the alleged crime. See *id.* at 34-35. Thus, the questions were designed to cast doubt on the credibility of defendant's testimony; that is, if defendant's version of the events was true, he would have reported the crime. See *id.* at 35. The prosecutor did not ask the jury to infer guilt because of defendant's post-arrest silence, but instead urged that defendant's testimony was unbelievable. See *id.* at 35-36. Accordingly, defendant has failed to establish plain error affecting his substantial rights with regard to his prosecutorial misconduct claim.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Henry William Saad  
/s/ Michael J. Riordan