

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHADRICK ALLEN MILLER,

Defendant-Appellant.

UNPUBLISHED

January 29, 2013

No. 310597

Gratiot County Circuit Court

LC No. 11-006396-FH

Before: WHITBECK, P.J., and SAAD and SHAPIRO, JJ.

PER CURIAM.

A jury convicted defendant of felonious assault, MCL 750.82, and prisoner in possession of a weapon, MCL 800.283(4). The trial court sentenced defendant as a fourth habitual offender to concurrent terms of 60 to 180 months in prison for the assault conviction and 60 to 240 months in prison for weapons conviction, to be served consecutively to the sentence defendant was serving at the time he committed the crimes. For the reasons set forth below, we affirm.

I. FACTS

A corrections officer saw defendant assault another prison inmate. The officer observed defendant make pounding or stabbing motions approximately four times with his right hand on the victim's upper back and left shoulder area. The officer then saw defendant toss something yellow in an area where a yellow-handled "shank" was later found. According to the officer, defendant then tried to blend back in with the rest of the prisoners, but the victim went after defendant and started to fight with him. The victim told a detective that defendant stabbed him over a gambling debt. However, at trial, the victim denied that defendant was the assailant. Trial testimony established that the prison environment becomes unsafe for a prisoner who informs on other inmates. Indeed, another inmate also testified that defendant was not the assailant.

II. DISCUSSION

A. SUFFICIENCY AND WEIGHT OF THE EVIDENCE

Defendant argues that the prosecutor presented insufficient evidence to convict him or, in the alternative, that the verdict was against the great weight of the evidence. Defendant did not need to affirmatively preserve his sufficiency argument in the trial court, *People v Osby*, 291 Mich App 412, 415; 804 NW2d 903 (2011), but he failed to preserve his great weight of the

evidence claim because he did not raise it in a motion for new trial. See *People v Winters*, 225 Mich App 718, 729; 571 NW2d 764 (1997).

As this Court explained in *People v Lockett*, 295 Mich App 165, 180; 814 NW2d 295 (2012):

This Court reviews de novo challenges to the sufficiency of the evidence 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) (quotation marks and citation omitted). This Court resolves all conflicts regarding the evidence in favor of the prosecution, and “[c]ircumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime.” [*People v Wilkins*, 267 Mich App 728, 738; 705 NW2d 728.]

“[W]hen a party fails to preserve a great-weight issue for appeal, an appellate court will look for plain error affecting the defendant’s substantial rights.” *People v Cameron*, 291 Mich App 599, 617; 806 NW2d 371 (2011), quoting *People v Musser*, 259 Mich App 215, 218; 673 NW2d 800 (2003).

Defendant makes the single argument that, because he offered evidence that conflicted with the prosecution’s evidence, there was insufficient evidence for a jury to convict him. However, it is for the jury to decide issues regarding the credibility of witnesses and the weight of the evidence. *People v Harrison*, 283 Mich App 374, 378; 768 NW2d 98 (2009). The prosecutor presented eyewitness testimony that defendant assaulted the victim in plain view and that defendant tossed a yellow object that was later discovered to be a weapon. Although the victim and another witness testified that defendant did not commit the assault, the jury was free to believe the testimony of the officer who witnessed the crime. There was sufficient evidence for a reasonable jury to find defendant guilty.

Regarding the great weight of the evidence, again, this Court should not interfere with the factfinder’s role of determining the weight of evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748, amended 441 Mich 1201 (1992). The jury, as factfinder, decided to accord more weight to the eyewitness testimony of an experienced corrections officer and less weight to the questionable testimony of two seasoned inmates, one of whom had earlier given an inconsistent statement. The verdict was not against the great weight of the evidence.

B. CONDUCT OF THE PROSECUTOR

Defendant argues that, in his closing argument, the prosecutor impermissibly used the victim’s prior inconsistent statement as substantive evidence of guilt. Defendant failed to preserve this issue by objecting during trial, and we review unpreserved claims of prosecutorial misconduct for plain error. *People v Cox*, 268 Mich App 440, 451; 709 NW2d 152 (2005).

“The prosecutor is free to argue from the evidence and its reasonable inferences in support of a witness’s credibility.” *People v Bennett*, 290 Mich App 465, 478; 802 NW2d 627 (2010). A prosecutor may also make arguments regarding the credibility of witnesses when

there is conflicting evidence and the determination of the defendant's guilt rests on which witnesses the jury will believe. *People v Thomas*, 260 Mich App 450, 455; 678 NW2d 631 (2004).

In his closing argument, the prosecutor noted that the defense in this case was that someone other than defendant attacked the victim. The prosecutor then summarized the correction officer's testimony and asked what the officer would gain if his statements were untrue. He then summarized the victim's inconsistent statements and offered an explanation about why the jurors might find his trial testimony untruthful. The record reflects that the prosecutor merely argued that the victim's trial testimony was impeached, not that the victim's prior inconsistent statements were substantive evidence of defendant's guilt. For substantive evidence, the prosecutor relied on the testimony of the corrections officer. The prosecutor's comments, taken as a whole, merely rebutted the suggestion that defendant was not the offender. Because we find no error, we also reject that defendant's claim of ineffective assistance of counsel for his failure to object to the prosecutor's closing remarks. See *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000).

Affirmed.

/s/ William C. Whitbeck

/s/ Henry William Saad

/s/ Douglas B. Shapiro