

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERAME DURELL CROWE,

Defendant-Appellant.

UNPUBLISHED

July 3, 2007

No. 266908

Wayne Circuit Court

LC No. 04-012093-01

Before: Bandstra, P.J., and Zahra and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for two counts of first-degree premeditated murder, MCL 750.316, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to life in prison for the murder convictions, 40 to 60 months in prison for the felon in possession conviction, and two years in prison for the felony-firearm conviction. We affirm.

Defendant first argues that he was denied a fair trial by the trial court's comments during defense counsel's cross-examination of Angelo Hardin. We disagree. Because defendant failed to object to the trial court's comments, this issue is not preserved, MRE 614(c), and will be reviewed for plain error affecting defendant's substantial rights, *People v Carines*, 460 Mich 750, 762-763; 597 NW2d 130 (1999).

As the prosecution correctly notes, the trial court "shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment." MRE 611. Further, MCL 768.29 provides, in relevant part, "It shall be the duty of the judge to control all proceedings during the trial, and to limit the introduction of evidence and the argument of counsel to relevant and material matters, with a view to the expeditious and effective ascertainment of the truth regarding the matters involved." A trial court may also interrogate witnesses called by a party to clarify testimony or elicit additional relevant information. MRE 614(b); *People v Cheeks*, 216 Mich App 470, 480; 549 NW2d 584 (1996). However, a criminal defendant has the right to a neutral and detached magistrate. *Id.* In questioning witnesses, the "trial court must exercise caution and restraint to ensure that its questions are not intimidating, argumentative, prejudicial, unfair, or partial." *Id.*

To determine whether the trial court's questions were proper, this Court must consider whether the questions and comments may well have unjustifiably aroused the jury's suspicion about a witness's credibility and whether partiality may have influenced the jury to the defendant's disadvantage. *Cheeks, supra* at 480. Although the trial court's remarks may have conveyed impatience, they were not intimidating, argumentative, prejudicial, unfair, or impartial and do not constitute plain error, and defendant was not deprived of a neutral or detached magistrate. See *id.*

However, even were we to find that these remarks were improper, defendant has failed to show that they affected the outcome of the trial in light of the overwhelming evidence against him. See *Carines, supra* at 763. Agent Steve Bailey testified that he saw defendant make a note of Robert Richards's name while Richards was testifying at the preliminary examination of defendant's friend, William Johnson. Davon Griggs explained that Hardin stole two cars on behalf of Griggs and defendant for their use in the murders of Richards and his fiancé, Raime Denson in order to "get [Johnson] home" and Griggs detailed those murders and defendant's involvement in them for the jury. Tony Terrell Wright also testified that he overheard defendant admit responsibility for the murders. Given this evidence, defendant has not established that the prosecutor's remarks affected the outcome of the trial. Therefore, reversal is not warranted.

Defendant next claims that the prosecutor committed misconduct during his cross-examination of defendant by asking him to comment on the credibility of prosecution witnesses Bailey, Hardin, Wright, and Griggs. We disagree. We review claims of prosecutorial misconduct case by case, examining the remarks in context, to determine whether they denied defendant a fair trial. *People v Bahoda*, 448 Mich 261, 266-267; 531 NW2d 659 (1995); *People v Abraham*, 256 Mich App 265, 272-273; 662 NW2d 836 (2003). Because defendant failed to object to the prosecutor's questions, this issue is not preserved. *People v Ackerman*, 257 Mich App 434, 448; 669 NW2d 818 (2003); *People v Rodriguez*, 251 Mich App 10, 30; 650 NW2d 96 (2002). Therefore, we will review it for plain error affecting defendant's substantial rights, *Carines, supra* at 762-763.

"The test of prosecutorial misconduct is whether defendant was denied a fair and impartial trial (i.e., whether prejudice resulted)" *Abraham, supra* at 272. Generally, it is not proper for a prosecutor to ask a defendant to comment on the credibility of prosecution witnesses because a defendant's opinion is not probative on this matter and credibility is for the trier of fact to determine. *Ackerman, supra* at 449; *People v Knapp*, 244 Mich App 361, 384; 624 NW2d 227 (2001).

During defendant's direct examination, he asserted that Bailey had not testified truthfully about seeing defendant write down Richards's name or seeing defendant elude police with William Johnson while Johnson was a fugitive. Defendant denied that he had been involved in stealing cars with Hardin as testified to by Hardin, and stated that he did not know why Hardin would accuse him of stealing a car. Similarly, defendant acknowledged that Wright had testified that he overheard defendant talking with Griggs and Ronnie Johnson about the homicide in Taylor, but he denied that any such conversation ever occurred, and stated that he did not know why Wright would make those accusations. Defendant also claimed that he did not know why Griggs had implicated him in the murders. Therefore, defendant challenged the credibility of each of these witnesses during his direct examination.

In *People v Buckey*, 424 Mich 1, 17-18; 378 NW2d 432 (1985), the Court found that it was improper for the prosecutor to ask the defendant to comment on the credibility of the complainant, four eyewitnesses, and one police officer. The Court concluded, however, that the error did not result in unfair prejudice to the defendant because the defendant “dealt rather well with the questions” and was not harmed by them. *Id.* at 17. The Court also noted that defense counsel failed to raise a timely objection, which could have cured any prejudice. *Id.* at 18. In *Knapp*, this Court relied on *Buckey* and found that, although the prosecutor asked the defendant whether a prosecution witness was a liar, the defendant was not harmed by the error because the defendant’s theory was that two witnesses conspired to have the defendant arrested. *Knapp, supra* at 385. Moreover, this Court concluded that the defendant’s claim did not warrant reversal because any undue prejudice could have been cured by a timely objection and a curative instruction. *Id.*

Accordingly, after examining in context the prosecutor’s questions to defendant regarding whether Bailey, Hardin, Wright, and Griggs were lying, we conclude that this questioning did not constitute misconduct because defendant raised the issue of the witnesses’ credibility during his direct examination. See *Bahoda, supra* at 266-267. Further, the transcript demonstrates that, like the defendant in *Buckey*, defendant dealt rather well with the prosecutor’s questions by offering consistent answers without faltering. *Buckey, supra* at 18; *Knapp, supra* at 385. Moreover, defendant’s claim does not warrant reversal because any undue prejudice could have been cured by a timely objection and a curative instruction. *Buckey, supra* at 18; *Knapp, supra* at 385.

Defendant also contends that the prosecutor committed misconduct by suggesting that defendant had a burden to present evidence of his innocence or alibi. The prosecutor asked defendant whether there were any alibi witnesses and whether anyone could back up his assertion that he was telling the truth and the other witnesses were lying. After examining the prosecutor’s questions in context, we conclude that these questions did not constitute misconduct because defendant raised the issue of the witnesses’ credibility during his direct examination. See *Bahoda, supra* at 266-267. The prosecutor merely attacked defendant’s theory that the four witnesses against him were lying and he was the only one telling the truth. This did not shift the burden of proof. See *People v Callon*, 256 Mich App 312, 331; 662 NW2d 501 (2003). Further, the trial court properly instructed the jury that the prosecutor bore the burden of proof and that there was no burden on defendant, which cured any prejudice that may have resulted from the prosecutor’s comments. See *People v Brown*, 267 Mich App 141, 153; 703 NW2d 230 (2005).

Additionally, defendant asserts that the prosecutor injected unsworn testimony into the record by asking defendant whether he was surprised that his mother had told the Bureau of Alcohol, Tobacco, and Firearms agent that she did not know if defendant was at home when the murders occurred. “A prosecutor may not argue the effect of testimony that was not entered into evidence at trial.” *People v Stanaway*, 446 Mich 643, 686; 521 NW2d 557 (1994). However, defendant has failed to show that this affected his substantial rights, in light of the overwhelming evidence against him. See *Carines, supra* at 763. Further, “[n]o error requiring reversal will be found if the prejudicial effect of the prosecutor’s improper conduct could have been cured by a timely instruction.” *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001), quoting *People v Schutte*, 240 Mich App 713, 721; 613 NW2d 370 (2000). The trial court instructed the jury that the attorneys’ statements and arguments are not evidence, and jurors are presumed to

follow the trial court's instructions. *People v Matuszak*, 263 Mich App 42, 58; 687 NW2d 342 (2004). Therefore, the prejudicial effect of the prosecutor's remarks, if any, would have been cured by the jury instructions. Accordingly, the prosecutor's remarks did not deny defendant a fair trial.

We affirm.

/s/ Richard A. Bandstra

/s/ Brian K. Zahra

/s/ Karen M. Fort Hood