

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MAURICE ANTHONY NEWSON,

Defendant-Appellant.

UNPUBLISHED

July 18, 2006

No. 259715

Bay Circuit Court

LC No. 04-010314-FC

Before: Donofrio, P.J., and O’Connell and Servitto, JJ.

PER CURIAM.

Defendant was convicted by a jury of assault with intent to commit murder, MCL 750.83, possession with intent to deliver 50 or more but less than 450 grams of cocaine, MCL 333.7401(2)(a)(iii), fleeing or eluding a police officer, MCL 750.479a(3), and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to concurrent prison terms of 18 to 36 years for the assault conviction, 10 to 20 years for the possession with intent to deliver cocaine conviction, and 2 ½ to 5 years for the fleeing or eluding conviction, to be served consecutive to a two-year term for the felony-firearm conviction. He appeals as of right. We affirm.

Defendant was convicted of shooting the victim outside an apartment on Third Street in Bay City in a dispute over cocaine. The police found scales, marijuana, and a large quantity of cocaine inside a refrigerator at the apartment, along with mail and other items bearing defendant’s name. Defendant fled the scene after shooting the victim, but police spotted his vehicle and matched it to one described as leaving the scene. A high-speed pursuit ensued, during which defendant threw a bag out of his vehicle and then surrendered. Along the route, police found the bag defendant admitted throwing from his vehicle, and it contained cocaine, broken pieces of a triple beam scale, a nine-millimeter pistol, and marijuana.

Defendant claimed that the bag belonged to the victim. According to defendant, the victim threatened him with a .40 caliber pistol, but he was able to disarm him. Defendant testified that he obtained control over the .40 caliber pistol, but the victim announced that he was going to shoot defendant with another pistol he had in his bag. Defendant explained that he tried to neutralize the victim by striking him with the .40 caliber pistol, but the pistol accidentally discharged. According to defendant, he retrieved the bag after the victim ran away, and he never intended to distribute or use its contents. Defendant also denied possession or knowledge of the cocaine in the apartment.

Defendant argues that trial counsel was ineffective for not requesting a jury instruction on the defense of accident. Because defendant did not raise this issue in a motion for a new trial or *Ginther*¹ hearing, “our review is limited to mistakes apparent on the record.” *People v Williams*, 223 Mich App 409, 414; 566 NW2d 649 (1997).

To establish a claim of ineffective assistance of counsel, a defendant must show both that counsel’s performance was deficient and that counsel’s deficient performance prejudiced the defense. In order to demonstrate that counsel’s performance was deficient, the defendant must show that it fell below an objective standard of reasonableness under prevailing professional norms. In so doing, the defendant must overcome a strong presumption that counsel’s performance constituted sound trial strategy. [*People v Riley (After Remand)*, 468 Mich 135, 140; 659 NW2d 611 (2003), citations omitted.]

The record does not support defendant’s claims of error. Deliberations over jury instructions were held in chambers, and afterward the jury was instructed on self-defense, but counsel did not request an accident instruction on the record. Of course, an accident instruction would be inconsistent with the argument of self defense, which, if believed, would probably have absolved defendant from both the assault charge and the intent to distribute cocaine charge. Moreover, the jury was instructed that it was to find defendant not guilty of assault with intent to commit murder unless the prosecutor proved beyond a reasonable doubt that defendant intended to kill the victim and the circumstances did not legally excuse the crime. The jury instruction on accident does not add much more and would have highlighted the inconsistencies in defendant’s arguments. Under the circumstances, defendant has failed to demonstrate that the failure to request the instruction was anything short of trial strategy. *Id.*

Next, defendant argues that the evidence was insufficient to support his convictions of assault with intent to commit murder and possession with intent to deliver 50 or more but less than 450 grams of cocaine. We disagree. “[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and 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 Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). When applying this deferential standard, “a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

Defendant first argues that the evidence was insufficient to support the finding that he intended to kill the victim. However, intent may be inferred from the circumstances, and “[b]ecause of the difficulty of proving an actor’s state of mind, minimal circumstantial evidence is sufficient.” *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). Here, the evidence, viewed in a light most favorable to the prosecution, demonstrated that defendant and the victim argued about drugs and started punching one another. Then, as the unarmed victim

¹ *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

was walking away, defendant shot him in the jaw with a pistol. This evidence was sufficient to enable a rational trier of fact to conclude beyond a reasonable doubt that defendant shot the victim with the intent to kill him.

Defendant next argues that the evidence was insufficient to connect him to the cocaine found in the refrigerator of the Third Street apartment. Constructive possession is sufficient to maintain a conviction, and a jury may find constructive possession if “the totality of the circumstances indicates a sufficient nexus between the defendant and the contraband.” *Wolfe, supra* at 521. Although defendant denied residing at the apartment, he admitted that he spent nights there, and other testimony indicated that he frequented the apartment. Mail addressed to defendant was found inside the apartment, and defendant admitted to owning an electronic scale found at the site. The jury could reasonably infer that defendant owned the individual baggies of cocaine he jettisoned from his vehicle and that he sold the cocaine from the stock he maintained at the apartment. Viewed in a light most favorable to the prosecution, the evidence was sufficient to permit a rational trier of fact to reasonably conclude that defendant controlled all of the cocaine found in the bag and at the Third Street apartment.

Next, defendant argues that the trial court erroneously scored offense variables (OV) 1, 2, and 3 of the sentencing guidelines by relying on facts that were not proven to a jury, contrary to the United States Supreme Court’s decision in *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004). We disagree. Our Supreme Court has determined that *Blakely* does not apply to Michigan’s indeterminate sentencing scheme. *People v Drohan*, ___ Mich ___; ___ NW2d ___ (Docket No. 127489, decided June 13, 2006), slip op at 2, 24.

Defendant raises several issues in a pro se supplemental brief, none of which have merit. Defendant makes several claims that the trial court had no jurisdiction to try his case or sentence him to prison. However, defendant bases his arguments on abstract contractual and extradition concepts that have no bearing on his criminal acts and arrest within Bay County. Personal jurisdiction is “vested in the circuit court upon the filing of a return of the magistrate . . . ‘before whom the defendant had been examined.’” *People v Goecke*, 457 Mich 442, 458-459; 579 NW2d 868 (1998), quoting *Genesee Prosecutor v Genesee Circuit Judge*, 391 Mich 115, 119; 215 NW2d 145 (1974). Defendant fails to demonstrate any deficiencies in the complaint that would deprive the trial court of jurisdiction over both the subject matter and himself. MCR 6.101; *Id.*; see also *People v Burrill*, 391 Mich 124, 133; 214 NW2d 823 (1974). Defendant has failed to establish plain error with respect to these unpreserved issues. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Next, defendant argues that the trial court erred by permitting evidence that marijuana was found both along the roadside of the route defendant was driving when he was chased by the police and in the Third Street apartment. We review a trial court’s decision to admit or exclude evidence for an abuse of discretion. *People v Jones*, 240 Mich App 706, 707; 613 NW2d 411 (2000). In this case, the marijuana evidence was relevant to connect defendant to the apartment and establish that defendant sold illicit drugs from that location. MRE 401.

Defendant also contends that he was denied his right to a trial before an impartial jury drawn from a cross-section of the community because there were no African-Americans on the jury or in the jury pool. We disagree. We generally review claims of systematic exclusion de novo, but because defendant did not preserve this issue we review it for plain error affecting

defendant's substantial rights. *People v Eccles*, 260 Mich App 379, 385; 677 NW2d 76 (2004). "To establish a prima facie violation of the fair cross-section requirement, a defendant must show that a distinctive group was underrepresented in his venire or jury pool, and that the underrepresentation was the result of systematic exclusion of the group from the jury selection process." *People v Smith*, 463 Mich 199, 203; 615 NW2d 1 (2000). Here, even assuming that African-Americans were underrepresented on defendant's jury, defendant has not demonstrated that the underrepresentation was the result of systematic exclusion, so defendant has failed to establish plain error.

Next, defendant argues that he was denied his right to confront the victim because the trial court did not permit him to cross-examine the victim about an alleged unrelated pending federal felony charge. We find no factual basis in the record for concluding that defendant was denied his right to cross-examine the victim on any relevant matter. Therefore, we reject this claim of error.

Affirmed.

/s/ Pat M. Donofrio
/s/ Peter D. O'Connell
/s/ Deborah A. Servitto