

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

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TYRONE MARTEL PRINCE,

Defendant-Appellant.

---

UNPUBLISHED  
October 29, 1996

No. 186975  
LC No. 94-009267

Before: M. J. Kelly, P.J., Hood and H. D. Soet,\* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to seventeen to thirty years' imprisonment for the murder conviction, and two years' imprisonment for the felony-firearm conviction, the former sentence to run consecutive to the felony-firearm sentence. Defendant appeals as of right. We affirm.

Defendant first argues that there was insufficient evidence to establish either that defendant possessed the requisite intent necessary for second-degree murder or that defendant was not acting in self-defense. In reviewing a claim of insufficient evidence, we view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985); *People v Turner*, 213 Mich App 558, 565; 540 NW2d 728 (1995).

Taken in a light most favorable to the prosecution, there was sufficient evidence for the trier of fact to find defendant guilty of second-degree murder and to conclude that defendant's claimed belief of imminent danger was either not honest or was unreasonable. At trial, Antonio Reid was properly impeached by the prior sworn testimony he gave at defendant's preliminary examination hearing. At the hearing, Antonio testified that defendant had a gun in his hand when decedent and the others passed by the house. Antonio also testified, at the preliminary examination, that decedent saw defendant, dropped

---

\* Circuit judge, sitting on the Court of Appeals by assignment.

his dog chain, and started to run, and that he only saw defendant with a gun. The jury was properly instructed that it could use Antonio's preliminary examination testimony as substantive evidence of whether defendant committed the crimes with which he was charged. MRE 801(d)(1)(A); *People v Malone*, 445 Mich 369, 376-377; 518 NW2d 418 (1994). Moreover, that testimony supports a finding that defendant acted with an intent to kill, an intent to do great bodily harm, or an intent to create a high risk of death or great bodily harm with knowledge that such is the probable result, *People v Neal*, 201 Mich App 650, 654; 506 NW2d 618 (1993), and that defendant was not acting in self-defense, *People v George*, 213 Mich App 632, 634-635; 540 NW2d 487 (1995). Based upon the verdict, the jury believed Antonio's preliminary examination testimony and such a credibility determination was within the province of the jury. *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988).

Defendant next argues that he was denied a fair and impartial trial due to prosecutorial misconduct. Defendant's claim of prosecutorial misconduct pertains to statements made during closing argument and rebuttal. However, defendant did not object to the statements made by the prosecutor. Therefore, appellate review is precluded unless a cautionary instruction could not have cured the prejudicial effect, or our failure to consider this issue would result in a miscarriage of justice. *People v Lee*, 212 Mich App 228, 245; 537 NW2d 233 (1995). We have reviewed the comments complained of by defendant and conclude that defendant was not denied a fair and impartial trial. *People v LeGrone*, 205 Mich App 77, 82; 517 NW2d 270 (1994).

Lastly, defendant asserts that the trial court violated the principle of proportionality. We find no merit to this claim. Defendant's seventeen year minimum sentence was within the recommended guidelines range of ten to twenty five years and his sentence, therefore, is presumptively proportionate. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987); *People v Eloby*, 215 Mich App 472, 479-480; \_\_\_ NW2d \_\_\_ (1996). Thus, the trial court did not abuse its discretion in imposing defendant's sentence. *People v Milbourn*, 435 Mich 630, 634-636; 461 NW2d 1 (1990).

Affirmed.

/s/ Michael J. Kelly

/s/ Harold Hood

/s/ H. David Soet