

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BAKARI KOYA TURNER,

Defendant-Appellant.

UNPUBLISHED

December 20, 1996

No. 190645

Saginaw County

LC No. 94-009686-FC

Before: MacKenzie, P.J., and Wahls and Markey, JJ.

PER CURIAM.

Defendant was convicted by jury of two counts of first-degree premeditated murder, MCL 750.316; MSA 28.548, and one count each of breaking and entering an occupied dwelling with intent to commit a felony, MCL 750.110; MSA 28.305, conspiracy to commit first-degree premeditated murder, MCL 750.157a; MSA 28.354(1) and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to concurrent terms of life imprisonment without parole on the murder and conspiracy convictions and ten to fifteen years for breaking and entering. He also received a two-year sentence for felony-firearm to be served consecutively and prior to the concurrent terms. Defendant appeals as of right from his convictions. We affirm.

During the evening of February 11-12, 1994, defendant and Willie DeBardelaben forcibly entered an apartment in Saginaw and shot Jeffrey Davis and Frank Davis, who eventually died from the gunshot wounds. At trial, defendant put on an insanity defense.

Defendant argues that his convictions should be reversed because the prosecutor commented in closing argument about Frank Davis being forty-four years old and not having lived to be forty-five. We review the prosecutor's remarks in context to determine whether they denied defendant a fair trial. *People v Bahoda*, 448 Mich 261, 266-267; 531 NW2d 659 (1995). "Emotional language may be used during closing argument and is 'an important weapon in counsel's forensic arsenal.'" *People v Ullah*, 216 Mich App 669, 679; 550 NW2d 568 (1996) (citation omitted). We conclude that the brief prosecutorial comment in question did not deny defendant a fair trial and, thus, does not require

reversal, particularly in light of the trial court's instruction to the jurors that sympathy or prejudice should not influence their decision. *People v Siler*, 171 Mich App 246, 248, 258; 429 NW2d 865 (1988).

Defendant also asserts that the prosecutor acted improperly by stating in closing argument, "Insane, insanity, claiming insanity on these facts is insulting." Because defendant did not object to this comment below, appellate review is precluded. *People v McElhaney*, 215 Mich App 269, 283; 545 NW2d 18 (1996); see also *People v Warren (After Remand)*, 200 Mich App 586, 589; 504 NW2d 907 (1993). In any event, we conclude that this remark, viewed in context, was proper as part of a reasonable argument from evidence produced at trial that defendant's purposeful behavior demonstrated that he was not insane at the time of the incident. *Bahoda, supra* at 282. Prosecutors may use "hard language" when supported by the evidence and are not required to phrase their argument in the blandest possible terms. *Ullah, supra* at 678. Defendant also argues that trial counsel's failure to object to this prosecutorial comment constituted ineffective assistance. However, inasmuch as the comment was proper, counsel did not act below an objective standard of reasonableness in failing to object to it. *People v Pickens*, 446 Mich 298, 302-303, 314; 521 NW2d 797 (1994).

Finally, defendant claims that the manner in which the jury venire from which his trial jury was selected violated the Sixth Amendment right to a jury drawn from a fair cross-section of the community, *People v Hubbard (After Remand)*, 217 Mich App 459, 465; 552 NW2d 593 (1996), and/or the Equal Protection Clause of the Fourteenth Amendment, *Taylor v Louisiana*, 419 US 522, 527; 95 S Ct 692; 42 L Ed 2d 690 (1975). This issue was not preserved for appeal because defendant made no challenge to the jury venire before his jury was impaneled and sworn. *Hubbard, supra* at 465. Defendant asserts that blacks and City of Saginaw residents have been underrepresented on jury venires in Saginaw County. However, defendant has failed to provide any evidence regarding the manner in which jury venires are selected in Saginaw County or any specific allegation regarding any part of this process that systematically excludes any distinctive group in the county. Thus, he has not established error requiring reversal based on this issue. Accordingly, defendant has also not shown that trial counsel denied him effective assistance by failing to raise this issue below. *Pickens, supra* at 302-303, 314.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Myron H. Wahls
/s/ Jane E. Markey