

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TONY RAYNELL HAMPTON,

Defendant-Appellant.

UNPUBLISHED
February 18, 1997

No. 188017
Recorder's Court
LC No. 94-012318

Before: Cavanagh, P.J., and Gage and D.A. Burrell,* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree felony murder, MCL 750.316; MSA 28.548, armed robbery, MCL 750.529; MSA 28.797, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). At sentencing, the trial court vacated the armed robbery conviction. The trial court then sentenced defendant to two years' imprisonment for the felony-firearm conviction and to a consecutive term of life without parole for his first-degree felony murder conviction. Defendant appeals as of right, and we affirm.

I

Defendant argues that the trial court erred in admitting the hearsay testimony of Melvin Earl Queen. We review a trial court's decision to admit evidence for an abuse of discretion. An abuse of discretion exists if an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the court's ruling. *People v McAlister*, 203 Mich App 495, 505; 513 NW2d 431 (1994).

Because Queen's testimony was offered by the prosecution to establish the truth of the matter asserted, that is, that defendant was in possession of a gun at the time the decedent was shot and killed, we conclude that the trial court erred in admitting the testimony. However, the error was harmless because the same evidence was attested to by the declarant at the preliminary examination, and the preliminary examination testimony was introduced at trial. Because the admission of the evidence did

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

not lead to a miscarriage of justice, there was no error requiring reversal. See *People v Mateo*, 453 Mich 203, 206-207; 551 NW2d 891 (1996).

II

Next, defendant claims that there were several instances of prosecutorial misconduct. Defendant did not object at trial to the comments of which he now complains. To preserve for appeal an argument that the prosecutor committed misconduct during trial, a defendant must object to the conduct at trial on the same ground as he asserts on appeal. In the absence of a proper objection, review is precluded unless a curative instruction could not have eliminated the prejudicial effect or the failure to consider the issue would result in a miscarriage of justice. *People v Nantelle*, 215 Mich App 77, 86-87; 544 NW2d 667 (1996).

Defendant contends that the prosecutor improperly bolstered the credibility of defendant's accomplice by eliciting testimony from the accomplice regarding her promise to give truthful testimony as a term of her plea agreement. Defendant also contends that he was denied a fair trial by the prosecutor's improper reference to a prior consistent statement made by the accomplice, and by the prosecutor's reliance on the statement during closing argument to buttress his assessment of the accomplice's honesty.

When reviewed in context, the prosecutor's reference to the plea agreement was not improper because the prosecutor did not use his office to vouch for the accomplice's credibility. See *People v Bahoda*, 448 Mich 261, 273-277; 531 NW2d 659 (1995). Likewise, the prosecutor's reference to the accomplice's prior consistent statement was offered to explain inconsistencies in the accomplice's statements which defendant had brought out for the purpose of impeachment, and therefore was not improper. See *People v Perkins*, 141 Mich App 186, 192; 366 NW2d 94 (1985). Moreover, the court eliminated any potential for prejudice by instructing the jury, both at the outset and the close of trial, that the attorney's questions and arguments are not evidence and that an accomplice's testimony requires close scrutiny. See *People v Turner*, 213 Mich App 558, 585; 540 NW2d 728 (1995).

III

Lastly, defendant argues that the trial court erred in failing to grant defendant credit for time served against the sentences imposed for the instant offenses. Because defendant did not request credit for time served at sentencing, this issue is not preserved for appellate review. See *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994); *People v Van Wert*, 149 Mich App 128, 130; 385 NW2d 622 (1985). Moreover, because defendant committed the instant crimes while on parole from an unrelated offense, he was not entitled to credit for time served on the sentences imposed in the present case. See MCL 768.7a(2); MSA 28.1030(1)(2); *People v Watts*, 186 Mich App 686, 688-689; 464 NW2d 715 (1991).

Affirmed.

/s/ Mark J. Cavanagh

/s/ Hilda R. Gage

/s/ Daniel A. Burress