

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MAURICE GRANISON,

Defendant-Appellant.

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UNPUBLISHED  
February 28, 1997

No. 188185  
Oakland Circuit Court  
LC No. 94-134707-FC

Before: Griffin, P.J., and McDonald and C. W. Johnson\*, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree murder, MCL 750.316; MSA 28.548, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). For those respective convictions, he was sentenced to life imprisonment without possibility of parole and to two years' consecutive imprisonment. He appeals as of right. We affirm.

I

Defendant first argues that his convictions must be reversed due to improper remarks by the prosecutor in her opening and closing arguments and by various other instances of alleged prosecutorial misconduct. On this issue, we caution the prosecutor and instruct her to tone down her passionate and inflammatory rhetoric. If such rhetoric continues to escalate, it may be necessary for us in future cases to reverse in order to insure a fair trial.

In the present case, defendant failed to object to the prosecutor's remarks or other complained of misconduct. Further, timely objections and a curative instruction could have remedied the harm. Accordingly, we review only for the existence of manifest injustice. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994).

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

After a thorough review of the record, we find no manifest injustice or miscarriage of justice. MCL 769.26; MSA 28.1096; MRE 103(a); MCR 2.613(A). Defendant was entitled to a fair trial, not necessarily a perfect one. *Delaware v Van Raddall*, 475 US 673, 681; 1065 S Ct 1431, 1436; 89 L Ed 2d 674 (1986); *People v Hedelsky*, 162 Mich App 382, 386; 412 NW2d 746 (1987). Defendant received a fair trial despite the alleged prosecutorial misconduct.

## II

Next, defendant asserts that he was denied the effective assistance of counsel because of his trial counsel's failure to object to the prosecutor's alleged improper comments and various other omissions by his counsel at the preliminary examination and trial. We find no denial of effective assistance of counsel.

The failure to object to the prosecutor's comments at trial was not a serious error on the part of defense counsel which denied defendant the effective assistance of counsel. *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 LEd2d 674 (1984); *People v Pickens*, 446 Mich 298, 326; 521 NW2d 797 (1994). Assuming, without deciding, that timely objections should have been made by counsel, defendant has not sustained his burden of proving "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland, supra* at 694.

The failure of defendant's trial counsel to seek the suppression of the testimony of two prosecution witnesses was not error because defendant has not presented any valid reasons for excluding this evidence. *Pickens, supra*. In addition, the existing record does not support defendant's remaining claims of error, so appellate review of these issues is foreclosed. *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).

## III

Defendant maintains that his convictions must be reversed because hearsay testimony was admitted into evidence against him. We find no cause for reversal. The complained of testimony by witness Lelah Flagg was not inadmissible hearsay because it was not introduced to prove the truth of any matter asserted. MRE 801.

## IV

Defendant claims that his convictions must be reversed because the trial judge was biased against him. This issue is not preserved for appellate review because defendant never moved to disqualify the trial judge pursuant to the procedures provided by MCR 2.003. *Welch v District Court*, 215 Mich App 253, 258; 545 NW2d 15 (1996).

## V

Defendant argues that the jury array did not meet Sixth Amendment requirements. Defendant did not challenge the jury array prior to the jury being impaneled and sworn. Due to this lack of any

objection, the record has not been developed to the point where one can discern whether distinctive groups in the community were systematically excluded from the jury venire or the jury. Accordingly, this issue is not preserved and will not be considered. *People v Hubbard (After Remand)*, 217 Mich App 459; 552 NW2d 593 (1996).

## VI

Defendant argues that insufficient evidence was presented to support his conviction for first-degree murder. We disagree. The testimony established that defendant shot the victim, Darren Simpson, in revenge for a prior attack by Simpson on a member of defendant's cocaine distribution ring. The evidence showed that defendant approached Simpson in a car, called his name to get his attention, then shot him in the chest when he turned around. This gunshot caused Simpson's death. From this evidence, a rational jury could reasonably infer that defendant intentionally killed Simpson without legal justification or excuse, and that his actions were deliberate and premeditated. Defendant maintains, however, that insufficient evidence was presented to convict him because the prosecutor's witnesses were not credible. Such issues of witness credibility are for the jury to determine and pertain to the weight of the evidence rather than its sufficiency. Viewing the evidence presented in a light most favorable to the prosecutor, a rational jury could have found that the essential elements of first-degree murder were proven beyond a reasonable doubt. *People v Jolly*, 442 Mich 458, 465-466; 502 NW2d 177 (1993); *People v Passeno*, 195 Mich App 91, 100; 489 NW2d 152 (1992).

## VII

Defendant argues that the trial court erred by allowing, over objection, the late endorsement of prosecution witness Joe Carson. The prosecutor showed good cause to endorse Carson as a witness. The prosecutor had only recently discovered that Carson had any testimony of value. Carson's testimony was significant since it contained one of defendant's incriminating admissions. The trial court did not abuse its discretion by allowing the prosecutor to add Carson as a witness. MCL 767.40a(4); MSA 28.980(1)(4); *People v Kulick*, 209 Mich App 258, 265; 530 NW2d 163 (1995).

## VIII

Finally, defendant argues that the trial court should have excluded testimony by witness Juanita Jones. A review of the record shows that the prosecutor did not attempt to surprise defense counsel with Jones' testimony and that defense counsel should have been aware of the content of the testimony since the prosecutor referred to it in her opening statement. Nor did defendant have a due process right to discovery of this evidence since it was not "exculpatory evidence which would raise a reasonable doubt about the defendant's guilt." *Stanaway, supra* at 666. Defendant's remaining reasons for excluding Jones' testimony were not raised below and are without merit. The trial court did not abuse its discretion by allowing admission of Jones' testimony. *People v Taylor*, 195 Mich App 57, 60; 489 NW2d 99 (1992).

Affirmed.

/s/ Richard Allen Griffin

/s/ Gary R. McDonald

/s/ Charles W. Johnson