STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN M. NEWLAND,

Defendant-Appellant.

UNPUBLISHED
May 1, 1998

No. 201171
Oakland Circuit Court
LC No. 96-147613 FC

Before: Cavanagh, P.J., and White and Young, Jr., JJ.

PER CURIAM.

A jury convicted defendant of first-degree premeditated murder, MCL 750.316; MSA 28.424(2), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The trial court sentenced defendant to a prison term of life without parole and to two years' imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

First, defendant claims that the evidence of premeditation was insufficient to support his first-degree murder conviction. When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a 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 Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). Circumstantial evidence and reasonable inferences arising therefrom may be sufficient to prove the elements of a crime. *People v McKenzie*, 206 Mich App 425, 428; 522 NW2d 661 (1994).

In order to prove first-degree premeditated murder, the prosecution must prove that the defendant intentionally killed the victim and the act of killing was deliberate and premeditated. *People v Hayward*, 209 Mich App 217, 229; 530 NW2d 497 (1995). Premeditation and deliberation can be inferred from the facts and circumstances comprising the incident, the actions of the accused both before and after the crime, and the actual circumstances of the killing. *Id*. A defendant must take a second look at his actions in order to find premeditation and deliberation, although the time that a defendant took to contemplate his actions may have been minimal. *People v Gonzalez*, 178 Mich App 526, 531; 444 NW2d 228 (1989).

Here, the jury could conclude that defendant had time to take a second look at his actions. From the testimony presented at trial, a reasonable factfinder could conclude that defendant fired a shot that struck the decedent nonfatally. The decedent was able to walk or run, leaving a trail of blood, before defendant fired the second, fatal shot. In the time between the two shots, defendant had the opportunity to take a second look at his actions. See *Gonzalez*, *supra*. Accordingly, sufficient evidence was presented to support the conviction of first-degree murder.

Defendant next contends that the conviction of felony-firearm must be reversed because the trial court failed to instruct the jury on the elements of the offense. We disagree. A verdict shall not be set aside where the court fails to instruct on any point of law unless the accused requests such instruction. MCL 768.29; MSA 28.1052; *People v Pouncey*, 437 Mich 382, 386; 471 NW2d 346 (1991). Here, because defendant did not request an instruction on felony-firearm and indicated that he was satisfied with the trial court's instructions, he is not entitled to have the conviction set aside. In any case, given that the jury convicted defendant of first-degree murder, and it was undisputed that the decedent died as the result of a gunshot wound, we conclude that the failure to instruct on the elements of felony-firearm was harmless error. See *People v Grant*, 445 Mich 535, 543; 520 NW2d 123 (1994).

In his final argument, defendant claims that the prosecutor bolstered the testimony of the eyewitness constituting prosecutorial misconduct where the bolstering suggested to the jury that the prosecutor knew that the eyewitness would not perjure herself because she was aware that the personal consequences would be great.

The failure to object to an instance of prosecutorial misconduct precludes appellate review because the failure to object deprives the trial court of an opportunity to remedy the error. *People v Ullah*, 216 Mich App 669, 679; 550 NW2d 568 (1996). Not only must the objection be made, but it must be made in a timely manner. A timely objection is made when it is interjected between the question and the answer. *In re Weiss*, 224 Mich App 37, 39; 568 NW2d 336 (1997). Here, defense counsel voiced a general objection to the prosecutor's line of questioning regarding the eyewitness' desire not to perjure herself. However, the objection came after the prosecutor had asked multiple questions regarding the eyewitness and the alleged prosecutorial misconduct of vouching for her credibility by suggesting that she would not perjure herself. Therefore, by failing to voice a timely objection, defense counsel did not preserve the issue of prosecutorial misconduct for 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). We conclude that failure to consider the issue would not result in a miscarriage of justice. A prosecutor's questioning is not improper if it does not impart to the jury that the prosecutor had some special knowledge or facts pertaining to the truthfulness of the witness. *People v Bahoda*, 448 Mich 261, 267, n 7; 531 NW2d 659 (1995). Although the prosecutor's line of questioning may have implied the potential of his office filing charges for perjury, the prosecutor did not suggest that the eyewitness had in fact perjured herself or that charges were presently pending. Furthermore, the prosecution was attempting to respond to defendant's impeachment of the eyewitness. Where impermissible comments are made by a prosecutor

in response to arguments previously raised by defense counsel, reversal is not mandated. *People v Vaughn*, 200 Mich App 32, 39; 504 NW2d 2 (1993).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Helene N. White
/s/ Robert P. Young, Jr.