

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
December 15, 2015

v

BRANDON LAMAR GLENN,  
Defendant-Appellant.

No. 323236  
Wayne Circuit Court  
LC No. 14-000704-FC

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Before: RONAYNE KRAUSE, P.J., and MARKEY and M. J. KELLY, JJ.

PER CURIAM.

Defendant, Brandon Lamar Glenn, appeals by right his jury convictions of second-degree murder, MCL 750.317, felon in possession of a firearm (felon-in-possession), MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced him as a habitual offender, MCL 769.10, to serve 50 to 75 years in prison for his second-degree murder conviction, to serve 5 to 7 ½ years in prison for felon-in-possession conviction, and to serve two years in prison for his felony-firearm conviction. For the reasons more fully explained below, we affirm.

The evidence at trial demonstrated that Glenn shot and killed his wife in the hallway outside an apartment during an altercation in January 2014. Glenn's mother and a family friend were in the apartment at the time. The family friend witnessed the fight before it moved into the hallway and testified that Glenn, who had a gun, followed his wife into the hallway. The witness then heard shots after which Glenn reentered the apartment and told them they needed to leave. Glenn's trial lawyer argued that Glenn's actions amounted to involuntary manslaughter, but the jury rejected that theory.

Glenn first argues he was denied a fair trial because his status as a convicted felon was introduced to the jury. However, he stipulated to his felony status at trial, effectively waiving his right to appellate review of this issue. *People v Carter*, 462 Mich 206, 215-216; 612 NW2d 144 (2000). And, in any event, we believe the trial court's instructions to the jury adequately protected his rights. See *People v Mayfield*, 221 Mich App 656, 661; 562 NW2d 272 (1997).

Glenn next argues that the trial court violated his due process rights when it refused to allow his lawyer to participate in voir dire. Glenn's lawyer stated that he was satisfied with the jury at the close of voir dire; accordingly, there is again no error to review. See *People v*

*Hubbard*, 217 Mich App 459, 466; 552 NW2d 493 (1996), overruled not in relevant part by *People v Harris*, 495 Mich 120; 845 NW2d 477 (2014).

Glenn also argues that his trial lawyer's failure to object to the trial court's limits on his participation in voir dire amounted to ineffective assistance. Because the trial court did not hold an evidentiary hearing on this issue, our review is limited to mistakes that are apparent on the record. *People v Matuszak*, 263 Mich App 42, 48; 687 NW2d 342 (2004). This Court reviews de novo whether a defendant's trial lawyer's acts or omissions violated the defendant's constitutional right to the effective assistance of counsel. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002).

To establish ineffective assistance of counsel, a defendant must show that his counsel's performance fell below an objective standard of reasonableness under prevailing professional norms, and that there is a reasonable probability that, but for counsel's deficient performance, the result of the proceedings would have been different. *Strickland v Washington*, 466 US 668, 688, 694; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Trakhtenberg*, 493 Mich 38, 51; 826 NW2d 136 (2012). We presume a defendant's lawyer's assistance was effective and the defendant bears the substantial burden of proving otherwise. *People v Vaughn*, 491 Mich 642, 670; 821 NW2d 288 (2012).

"A defendant who chooses a jury trial has an absolute right to a fair and impartial jury." *People v Tyburski*, 445 Mich 606, 618; 518 NW2d 441 (1994). "The function of voir dire is to elicit sufficient information from prospective jurors to enable the trial court and counsel to determine who should be disqualified from service on the basis of an inability to render decisions impartially." *People v Sawyer*, 215 Mich App 183, 186; 545 NW2d 6 (1996). Voir dire is the only procedure that the defendant has to ensure the selection of an impartial jury. *Tyburski*, 445 Mich at 618. However, in ensuring that voir dire effectively serves this function, the trial court has considerable discretion in both the scope and conduct of voir dire. *Id.* at 619.

"A defendant does not have the right to have counsel conduct the voir dire." *People v Washington*, 468 Mich 667, 674; 664 NW2d 203 (2003). Nor does a defendant have a right to have the court ask questions submitted by counsel. *Id.* What constitutes acceptable and unacceptable voir dire practice "does not lend itself to hard and fast rules." *Tyburski*, 445 Mich at 623. Rather, a trial court must be allowed "wide discretion in the *manner* they employ to achieve the goal of an impartial jury." *Id.*

At Glenn's trial, the judge conducted voir dire. The judge asked the potential jurors numerous questions including: (1) if they knew trial counsel, Glenn, or any of the potential witnesses, (2) if serving on the jury would cause them an undue hardship, (3) if they had any medical issues that would prevent them from serving on the jury, (4) if they had any philosophical or ideological disagreements with the foundations of the American justice system, (5) if they would have any trouble following instructions, (6) if any of them had been the victim of, or threatened with, a crime of violence, (7) if they had any friends or relatives who had been the victim of, or threatened with, a crime of violence, (8) if any of them, their friends, or relatives had been the victim of, or threatened with, domestic violence, (9) if any of them, their friends, or relatives had ever been charged with a crime of violence, (10) and if they had any legal training, such as a background in law enforcement. The trial judge also asked each potential juror about

his or her marital status, the extent of his or her formal education, what he or she did for a living, what his or her spouse did for a living, if he or she had any children, and the ages and sexes of any children. The trial court not only asked numerous preliminary questions, but also engaged the jurors in additional follow-up questioning when issues were raised regarding their qualifications to serve. Glenn's trial lawyer passed on any challenges to jurors for cause, but used peremptory challenges to excuse five potential jurors.

Glenn's lawyer's failure to object to the way the trial court conducted voir dire did not fall below an objective standard of reasonableness. Glenn did not have the right to have his lawyer conduct voir dire, *Tyburnski*, 445 Mich at 619, and the record demonstrates that the scope of the trial court's voir dire was sufficient to elicit enough information so that the court and the parties could make an independent determination of each juror's ability to be impartial. See *id.* at 620. A trial lawyer is not ineffective for failing to make a futile objection or advocate a meritless position. *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010).

Finally, Glenn argues that the prosecutor improperly vouched for the credibility of a witness in his closing argument, which deprived Glenn of his right to a fair trial. To preserve an issue of prosecutorial error, a defendant must contemporaneously object and request a curative instruction. *People v Bennett*, 290 Mich App 465, 475; 802 NW2d 627 (2010). A curative instruction is usually sufficient to cure the prejudicial effect of an inappropriate prosecutorial comment. *People v Cain*, 299 Mich App 27, 36; 829 NW2d 37 (2012), vacated not in relevant part by 495 Mich 874 (2013). Here, Glenn's trial lawyer did not object to the prosecutor's statements or make a request for a curative instruction, thus this issue is not preserved. As a result, we must review this claim for plain error that affected substantial rights. *People v Brown*, 279 Mich App 116, 134; 755 NW2d 664 (2008).

The test for prosecutorial error is whether the prosecutor's remarks deprived the defendant a fair and impartial trial. *People v Dobek*, 274 Mich App 58, 63; 732 NW2d 546 (2007). This court reviews claims of prosecutorial error on a case-by-case basis, and we examine the record and evaluate a prosecutor's remarks in context. *People v Mann*, 288 Mich App 114, 119; 792 NW2d 53 (2010). Prosecutorial comments must be read as a whole and evaluated in the light of the relationship they bear to the evidence admitted at trial. *Brown*, 279 Mich App at 135.

A prosecutor may not vouch for the credibility of a witness to the effect that he has some special knowledge that the witness is testifying truthfully. *People v Bahoda*, 448 Mich 261, 276; 531 NW2d 659 (1995). A prosecutor is permitted, however, to remark on his or her own witnesses' credibility, particularly when credibility is at issue. *People v Thomas*, 260 Mich App 450, 455; 678 NW2d 631 (2004). Additionally, a "prosecutor is free to argue from the evidence and its reasonable inferences in support of a witness's credibility." *Bennett*, 290 Mich App at 478.

In this case, during cross-examination of the prosecution's teenaged material witness, Glenn's trial lawyer implied that her testimony was not reliable because she was tired during the incident and, as a result, might not have a clear memory of the event. During the prosecutor's closing argument, the prosecutor suggested that the teenaged witness was credible:

I think one of the things that rang out so clear to me was how nervous and afraid she was and I commend her courage for coming in here when a lot of adults don't want to be here and how she told us what she saw and, unfortunately, what she experienced that nobody should have to experience.

Later, the prosecutor added, "everything [the material witness] said is corroborated in the tape [of Glenn's statement to police officers] so there's not even a question of, is she lying, who did this crime? Those are not issues on the table. Everything she told you says she was telling us the truth."

The characterization of the witness as courageous was a reasonable argument based on the record evidence that, despite her youth and her fears, she testified regarding her observations of the murder. The prosecutor's argument that the substance of the material witness's testimony was corroborated by the substance of Glenn's video recorded statement responded to Glenn's trial lawyer's tactic to impeach the witness's credibility because she was tired during the shooting. This argument did not imply that the prosecutor had special knowledge that the witness was truthful, and was permissible based on the evidence in the record and reasonable inferences in support of the material witness's credibility. *Bennett*, 290 Mich App at 478.

The more troubling remark was when the prosecutor stated in his closing that "[he] believe[d] [the witness] was very credible." The prosecutor's statement of opinion concerning his witness' truthfulness was irrelevant, improper, and—under different circumstances—might have affected the fairness of the trial; the prosecutor plainly erred by offering his opinion. *Id.* Nevertheless, because the prosecutor did not exacerbate the error through repetition or specific appeals to his special knowledge, we conclude that whatever prejudice Glenn might have suffered was minimal and likely cured by the trial court's jury instructions. See *Bahoda*, 448 Mich at 281. Moreover, Glenn cannot establish prejudice in light of the overwhelming evidence against him, which included his own statement, which corroborated the material witness's testimony. *Id.* at 281-282.

Glenn has not established that there were any errors warranted a new trial.

Affirmed.

/s/ Amy Ronayne Krause

/s/ Jane E. Markey

/s/ Michael J. Kelly