

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARONE A. MCCHINE,

Defendant-Appellant.

UNPUBLISHED

February 22, 2000

No. 211259

Oakland Circuit Court

LC No. 97-151740-FC

Before: Hood, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of three counts of armed robbery, MCL 750.529; MSA 28.797, and three counts of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to concurrent terms of six to twenty years' imprisonment for each armed robbery conviction to be served consecutive to concurrent terms of two years' imprisonment for each felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant first argues that he was denied a fair trial because the prosecutor improperly presented testimony and argument concerning the fact that three of defendant's accomplices had pleaded guilty to the charged offenses. We disagree. The record indicates that while the prosecutor elicited testimony regarding the pleas, defense counsel did not object at trial. In fact, after the prosecutor briefly commented on the subject during opening argument, it was defense counsel who first informed the jury that one accomplice had pled guilty and implied that another had been sentenced as a juvenile in exchange for his testimony. Furthermore, defense counsel, apparently believing that the plea information was favorable to defendant's case, continued to use it on cross-examination in an effort to impeach the accomplices' testimony and to support his argument that their testimony was incredible. We will not allow defendant to use the plea information to undermine the accomplices' credibility at trial, and then allow him to argue on appeal that the introduction of the plea was prejudicial. *People v Dowdy*, 211 Mich App 562, 571-572; 536 NW2d 794 (1995).

Defendant next argues that he was denied a fair trial because the prosecutor introduced and commented upon evidence that he had exercised his Fifth Amendment right against self-incrimination during a custodial interrogation. Because defendant did not object to the testimony or the prosecutor's

closing remarks this issue is not preserved, and our review is limited to determining whether defendant has demonstrated a plain error that affected his substantial rights. *People v Carines*, 460 Mich 750, 761-764, 774; 597 NW2d 130 (1999). A “reviewing court should reverse only when the defendant is actually innocent or the error seriously affected the fairness, integrity or public reputation of judicial proceedings.” *Id.* at 774. We question whether the prosecutor’s conduct was improper. We need not decide the issue however because a thorough review of the record persuades us that defendant’s substantial rights were not affected by the alleged impropriety. Three accomplices testified regarding defendant’s involvement in the offenses, defendant’s fingerprints were discovered on plastic garbage bags found at the crime scene, and defendant gave a statement implicating himself in the robberies. In light of this evidence, and because the alleged error did not seriously affect the fairness, integrity, or public reputation of the proceedings, we conclude that reversal is not warranted based on this unpreserved issue.

Defendant next argues that the trial court erred in denying his motion for a directed verdict because there was insufficient evidence to support his felony-firearm convictions either as a principal or as an aider and abettor. We disagree. In reviewing a trial court’s decision on a motion for a directed verdict and the sufficiency of the evidence in a criminal case, we 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 were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992); *People v Harris*, 190 Mich App 652, 658; 476 NW2d 767 (1991). “The elements of felony-firearm are that the defendant possessed a firearm during the commission or attempt to commit a felony.” *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996). Circumstantial evidence and reasonable inferences arising from that evidence may be sufficient to prove the elements of the crime. *Carines*, *supra* at 757.

Viewed in the light most favorable to the prosecution, the evidence elicited from defendant’s accomplices and the three armed robbery victims established that: (1) five assailants picked up defendant on the day in question and discussed the armed robbery of a clothing store; (2) at defendant’s direction, the driver stopped at a house whereupon defendant exited the vehicle and returned with a .38 caliber handgun; (3) upon arriving at the clothing store, five of the assailants entered the store wearing masks while the sixth remained in the “get away car”; (4) two assailants that entered the store were each armed with a gun; (5) defendant was the fourth person to enter the store armed with the handgun he had brought into the car; and (6) defendant’s gun and the two others were used to rob three victims in the store at gun point, from which it could be inferred that defendant remained in possession of his exposed firearm during the entire incident. While a third accomplice testified that defendant did not enter the store and did not use a gun, credibility determinations are appropriately left to the trier of fact and will not be resolved anew by this Court. *People v Givans*, 227 Mich App 113, 123-124; 575 NW2d 84 (1997). We find that the evidence presented, when viewed in the light most favorable to the prosecution, was more than sufficient to support defendant’s felony-firearm convictions. Accordingly, the trial court did not err in denying defendant’s motion for a directed verdict.

Finally, given our resolution of the preceding issues, we reject defendant’s claim that he

was denied a fair trial as a result of the cumulative effect of the alleged errors. *People v Daoust*, 228 Mich App 1, 16; 577 NW2d 600 (1998).

Affirmed.

/s/ Harold Hood

/s/ Michael R. Smolenski

/s/ Michael J. Talbot