

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
March 25, 2014

v

DEON LAMONT TAYLOR,  
Defendant-Appellant.

No. 313677  
Macomb Circuit Court  
LC No. 2012-000990-FC

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Before: JANSEN, P.J., and OWENS and SHAPIRO, JJ.

PER CURIAM.

Defendant Deon Lamont Taylor appeals as of right his convictions for three counts of solicitation of murder, MCL 750.157b(2), and one count of conspiracy to commit first-degree premeditated murder, MCL 750.157a; MCL 750.316(1)(a). He was sentenced to concurrent terms of 450 months to 70 years' imprisonment for each solicitation conviction, and to life imprisonment for the conspiracy to commit first-degree premeditated murder conviction. We affirm.

Defendant's convictions arose out of his conspiracy and solicitation of the murders of two witnesses against him in a pending criminal sexual conduct case, as well as a family member of those witnesses. While he was incarcerated, defendant solicited one of his former associates, Carlas May, to effectuate the killings. Unbeknownst to defendant, May cooperated with the police and wore a recording device during one of his meetings with defendant. May also met with Kenisha Faison, defendant's co-conspirator, and recorded two conversations with her.

Before trial began, the trial court permitted the prosecution to introduce evidence of the criminal sexual conduct charges against defendant, but precluded references to the outcome of the case. While testifying, Detective Sergeant Gary Wiegand explained the steps he took to investigate this case, and noted that defendant pleaded guilty to the criminal sexual conduct charges. Subsequently, the trial court offered to read a curative instruction to the jury, which defendant's trial counsel refused. On appeal, defendant argues that Wiegand's reference to his guilty plea in the criminal sexual conduct case denied him the right to a fair trial. Our review of this issue is for plain error affecting substantial rights because defendant failed to specify the grounds of his objection at trial or request for a mistrial. See *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999); *People v Buie*, 298 Mich App 50, 70-71; 825 NW2d 361 (2012); *People v Alter*, 255 Mich App 194, 205; 659 NW2d 667 (2003).

In this case, the prosecution did not invite Wiegand's comments, as the prosecutor merely asked Wiegand to explain the steps of his investigation. Because Wiegand's reference to defendant's guilty plea was brief, and received no other emphasis during trial, we conclude that it is unlikely that defendant suffered any significant prejudice. See *People v Mahone*, 294 Mich App 208, 213; 816 NW2d 436 (2011) (quotation marks and citations omitted) (stating that unresponsive answers "are generally not considered prejudicial errors unless egregious or not amendable to a curative instruction"); *People v Haywood*, 209 Mich App 217, 228; 530 NW2d 497 (1995) (stating that "an unresponsive, volunteered answer to a proper question is not grounds for the granting of a mistrial"). Additionally, defendant waived any error when he expressly refused the trial court's offer to provide an immediate curative jury instruction and agreed that the subsequent jury instruction given by the trial court after the close of proofs was adequate. See *People v Kowalski*, 489 Mich 488, 503; 803 NW2d 200 (2011) ("When defense counsel clearly expresses satisfaction with a trial court's decision, counsel's action will be deemed to constitute a waiver.").

Next, defendant challenges the trial court's decision to admit statements made by Faison to May. During its case-in-chief, the prosecution introduced Faison's statements to May through the testimony of Detective Sergeant Jeff Budzynowski, an officer who listened to the recorded conversations between May and Faison. Defendant objected, arguing that the statements were hearsay and that they violated his right of confrontation. "The decision whether to admit evidence falls within a trial court's discretion and will be reversed only when there is an abuse of that discretion." *People v Duncan*, 494 Mich 713, 722; 835 NW2d 399 (2013). "Preliminary questions of law, including whether a rule of evidence precludes the admission of evidence, are reviewed de novo." *People v Burns*, 494 Mich 104, 110; 832 NW2d 738 (2013). Additionally, the constitutional issue whether defendant was denied his right of confrontation is an issue that we review de novo. *People v Benton*, 294 Mich App 191, 195; 817 NW2d 599 (2011).

"'Hearsay' is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." MRE 801(c). Hearsay is inadmissible unless an exception or exclusion applies. MRE 802. MRE 801(d)(2)(E) provides that a statement is not hearsay if it is "a statement by a coconspirator of a party during the course and in furtherance of the conspiracy on independent proof of the conspiracy." The proponent of evidence offered pursuant to MRE 801(d)(2)(E) must establish three things: (1) independent evidence of the conspiracy; (2) the statement was made during the course of the conspiracy; and (3) the statement furthered the conspiracy. *People v Martin*, 271 Mich App 280, 316-317; 721 NW2d 815 (2006).

Defendant only challenges the first requirement of the hearsay exclusion, i.e., whether the prosecution established, by a preponderance of the evidence, the existence of a conspiracy through independent evidence. *Id.* The requirement that there be independent evidence of the conspiracy means that the conspiracy "must be proved independently of the co-conspirator's statements." *People v Vega*, 413 Mich 773, 780; 321 NW2d 675 (1982). In order to establish a conspiracy, the prosecution had to demonstrate that "two or more individuals must have voluntarily agreed to effectuate the commission of a criminal offense." *People v Justice (After Remand)*, 454 Mich 334, 345; 562 NW2d 652 (1997).

We find that there was sufficient evidence of the conspiracy independent of Faison's statements to May. At the time Faison's statements were offered into evidence, there was evidence that defendant and Faison shared a secret romantic relationship. Additionally, there was evidence that Faison retrieved keys to the proposed victims' home, and that she met with defendant in jail on the same day that she met with May. Further, there was evidence that defendant gave May Faison's telephone number, told him to contact Faison, and told him that Faison knew about the plan to kill the proposed victims. Therefore, the prosecution presented evidence that Faison and defendant voluntarily agreed to effectuate a criminal offense, see *id.*, and the prosecution satisfied MRE 801(d)(2)(E)'s requirement of establishing the existence of a conspiracy, by a preponderance, through evidence that was independent of Faison's statements to May, see *Martin*, 271 Mich App at 316-317.

Next, we reject defendant's argument that the admission of Faison's statements to May violated his right of confrontation. The Confrontation Clause of the Sixth Amendment guarantees a criminal defendant the right to confront witnesses against him and "bars the admission of testimonial statements by a witness who does not appear at trial unless the witness is unavailable and the defendant had a prior opportunity to cross-examine the witness." *People v Dendel (On Second Remand)*, 289 Mich App 445, 453; 797 NW2d 645 (2010), citing *Crawford v Washington*, 541 US 36, 53-54; 124 S Ct 1354; 158 L Ed 2d 177 (2004). "A pretrial statement is testimonial if the declarant should reasonably have expected the statement to be used in a prosecutorial manner and if the statement was made under circumstances that would cause an objective witness reasonably to believe that the statement would be available for use at a later trial." *Id.*, citing *Crawford*, 541 US at 51-52. The *Crawford* Court explained that "[m]ost of the hearsay exceptions covered statements that by their nature were not testimonial—for example, business records or statements in furtherance of a conspiracy." *Crawford*, 541 US at 56 (emphasis added).

The challenged statements at issue in this case were not testimonial. Statements made to acquaintances, such as the statements at issue in this case, are nontestimonial because they lack any type of legal formality. *People v Taylor*, 482 Mich 368, 378; 759 NW2d 361 (2008); *People v Bennett*, 290 Mich App 465, 483; 802 NW2d 627 (2010). Furthermore, Faison's statements to May were not made under circumstances that would have caused an objective witness to believe that the statements would be available for use at a later trial. Indeed, Faison did not know that May was acting as a government informant at the time she made her statements. In *Davis v Washington*, 547 US 813, 825; 126 S Ct 2266; 165 L Ed 2d 224 (2006), citing *Bourjaily v United States*, 483 US 171, 181-184; 107 S Ct 2775; 97 L Ed 2d 144 (1987), the United States Supreme Court characterized unwitting statements by a coconspirator to a government informant as "clearly nontestimonial." Thus, Faison's statements to May did not implicate defendant's Confrontation Clause rights.

Next, defendant argues that the trial court abused its discretion by declining his request to instruct the jury on attempted solicitation of murder. We review de novo issues of law pertaining to jury instructions. *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006). However, "a trial court's determination whether a jury instruction is applicable to the facts of the case is reviewed for an abuse of discretion." *Id.* (quotation marks and citation omitted).

MCL 768.32 permits the trial court to instruct the jury on certain inferior offenses, including attempt. *People v Silver*, 466 Mich 386, 388; 646 NW2d 150 (2002) (TAYLOR, J), citing *People v Cornell*, 466 Mich 335, 354; 646 NW2d 127 (2002). An attempt instruction is only appropriate “if the charged greater offense requires the jury to find a disputed factual element that is not part of the [attempt] and a rational view of the evidence would support it.” *Id.*

In this case, the trial court did not abuse its discretion by refusing to instruct the jury on attempt to solicit murder because the evidence did not support such an instruction. “Solicitation to commit murder occurs when (1) the solicitor purposely seeks to have someone killed and (2) tries to engage someone to do the killing.” *People v Crawford*, 232 Mich App 608, 616; 591 NW2d 669 (1998). “Solicitation is complete when the solicitation is made.” *Id.* The record reveals no evidence that defendant only attempted to solicit the murder of the proposed victims. Rather, the only evidence presented was that defendant sought out May and gave him directions to the victims’ house and the means to obtain keys to the house. Defendant also gave May directions with regard to whom to kill first, discussed payment for the murders, and told May the best escape route for avoiding police officers. As soon as defendant asked May to commit the murders, the offense was complete. *Id.* Therefore, the evidence presented did not support an attempt instruction. Additionally, defendant did not rely on a theory of defense at trial that he only attempted to solicit May. Instead, he argued that he never intended for May to kill anyone. Attempt requires a specific intent to do an act. *People v Jones*, 443 Mich 88, 100; 504 NW2d 158 (1993). If defendant did not intend for May to murder anyone, he would not have been guilty of an attempted solicitation because he never would have intended for the solicitation to occur. See *id.* Accordingly, a rational view of the evidence did not support an attempt instruction, and the trial court did not abuse its discretion by declining to give the instruction.

Defendant next argues that the prosecution presented insufficient evidence to support his convictions. “We review de novo a challenge on appeal to the sufficiency of the evidence.” *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). “We examine the evidence in a light most favorable to the prosecution, resolving all evidentiary conflicts in its favor, and determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond reasonable doubt.” *Id.* at 196.

Defendant first argues that there was insufficient evidence to support his conspiracy conviction. “Due process requires that, to sustain a conviction, the evidence must show guilt beyond a reasonable doubt.” *People v Harverson*, 291 Mich App 171, 175; 804 NW2d 757 (2010). In order to establish a conspiracy, the prosecution must establish that “two or more individuals . . . voluntarily agreed to effectuate the commission of a criminal offense.” *Justice (After Remand)*, 454 Mich at 345. “The individuals must specifically intend to combine to pursue the criminal objective, and the offense is complete upon the formation of the agreement.” *People v Jackson*, 292 Mich App 583, 588; 808 NW2d 541 (2011). In this case, the illegal activity alleged by the prosecution was first-degree premeditated murder. Premeditation may be established through circumstantial evidence. *People v Unger (On Remand)*, 278 Mich App 210, 229; 749 NW2d 272 (2008).

The prosecution presented overwhelming evidence of defendant’s guilt with regard to the conviction for conspiracy to commit first-degree premeditated murder. Faison visited defendant in jail on several occasions, and during these visits, defendant and Faison discussed how they

could have the criminal sexual conduct charges against defendant dismissed. During one conversation, defendant referred to an associate who would soon be released from incarceration. Subsequently, Faison met with May, who she believed was recently released from incarceration, and discussed the killings. On that same day, defendant and May discussed the killings. In their respective meetings with May, both Faison and defendant assured May that Faison was involved in the plot to kill the proposed victims. Additionally, Faison assisted May in the manner defendant said she would, as she provided May with a key to the proposed victims' house, as well as directions to the house and instructions for committing the murders. When viewed in a light most favorable to the prosecution, there was sufficient evidence that defendant voluntarily entered into an agreement with Faison to effectuate the crime of first-degree premeditated murder.

We also find that there was sufficient evidence of defendant's guilt with regard to the solicitation offenses. "Solicitation to commit murder occurs when (1) the solicitor purposely seeks to have someone killed and (2) tries to engage someone to do the killing." *Crawford*, 232 Mich App at 616. Solicitation to commit murder requires proof of the defendant's specific intent that a murder will be committed. *People v Fyda*, 288 Mich App 446, 450-451; 793 NW2d 712 (2010). A defendant's intent to kill can be inferred from circumstantial evidence. *Unger*, 278 Mich App at 229.

In this case, the prosecution presented sufficient evidence that defendant solicited May to kill the victims and that defendant entertained the requisite intent that murder would be committed. Defendant sought out May, asked him "can you handle this?" and discussed the killings with him approximately four or five times. After May initially tried to dissuade defendant from seeking to have the victims murdered, defendant persisted. Defendant offered May \$120,000 for the killings, and discussed the manner in which he wanted May to kill the victims. Defendant also told May the layout of the victims' home and which victim he should kill first. Therefore, the prosecution presented sufficient evidence that defendant purposefully sought to have the victims killed and that he tried to engage May to do the killing.

In arguing that the evidence was insufficient, defendant asks this Court to find that the witnesses against him lacked credibility and to draw inferences from the evidence in his favor. However, we review the evidence "in a light most favorable to the prosecution," and we "will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of the witnesses." *People v Eisen*, 296 Mich App 326, 331; 820 NW2d 229 (2012) (quotation marks and citations omitted).

In passing, defendant also appears to raise an entrapment argument. Because he did not raise the argument below, we need not address it. See *People v Bailey*, 439 Mich 897; 478 NW2d 480 (1991). Nevertheless, we find his claim meritless because "[t]he record shows that the police did nothing more than present the defendant with the opportunity to commit the crime[s] of which he was convicted, which is insufficient to support a finding of entrapment." *Fyda*, 288 Mich App at 460 (quotation marks and citation omitted).

Lastly, defendant argues that the trial court erred in denying his motion for a directed verdict. Our review of this claim is similar to our review of defendant's sufficiency claim, except that review is limited to the evidence presented by the prosecution. *People v Aldrich*, 246

Mich App 101, 122; 631 NW2d 67 (2001). For the reasons stated above, when viewed in a light most favorable to the prosecution, the evidence produced at trial, all of which was presented by the prosecution, was sufficient to support each of defendant's convictions. Accordingly, defendant's claim that the trial court erred by denying his motion for a directed verdict is meritless.

Affirmed.

/s/ Kathleen Jansen

/s/ Donald S. Owens

/s/ Douglas B. Shapiro