

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARIOUS MICHAEL-MARCEL COLEMAN,

Defendant-Appellant.

UNPUBLISHED

June 19, 2014

No. 315099

Wayne Circuit Court

LC No. 12-006172-FC

Before: DONOFRIO, P.J., and GLEICHER and M. J. KELLY, JJ.

PER CURIAM.

Defendant Darious Michael-Marcel Coleman appeals by right his jury convictions of second-degree murder, MCL 750.317, four counts of assault with intent to murder, MCL 750.83, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced Coleman as a third habitual offender, MCL 769.11, to serve 48 to 75 years in prison for his second-degree murder conviction, 20 to 40 years in prison for his assault with intent to murder convictions, 3 years to 7 years and six months in prison for his felon in possession conviction, and two years for his felony-firearm conviction. Because we conclude there were no errors warranting relief, we affirm.

At trial, testimony and evidence showed that Coleman had an altercation with five men that he knew from the neighborhood at a gas station. After the altercation, Coleman threatened the men and then walked home. The young men went to a nearby house. Coleman retrieved a semi-automatic rifle from his home and walked back to confront the men. Coleman began to fire on the men, who ran away. Coleman fired as many as 15 shots at the men and killed one of them.

Coleman first argues that the trial court erred by allowing the jury to learn that he stipulated that he had a prior felony conviction, which denied him due process of law and a fair trial. Coleman's lawyer stipulated that Coleman was ineligible to carry or possess a firearm because he had a prior felony conviction and apparently agreed that the jury could be instructed on this element. Accordingly, we conclude that Coleman waived this claim of error. See *People v Eisen*, 296 Mich App 326, 328-329; 820 NW2d 229 (2012). In any event, Coleman's lawyer did not request an instruction or prophylactic measure to address any potential prejudice associated with this stipulation. See *People v Mayfield*, 221 Mich App 656, 659-660; 562 NW2d 272 (1997). Therefore, on this record, we conclude that there was no error in the handling of this stipulation.

Coleman next argues that the prosecutor improperly appealed to the jury's sympathy for the deceased victim and to the jury's sense of civic duty. Because Coleman's lawyer did not object to the prosecutor's remarks, this claim is unpreserved. We review unpreserved claims of prosecutorial error for plain, outcome determinative error. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001).

In making his or her arguments to the jury, a prosecutor may not ask the jury to convict out of sympathy for the victim. *People v Unger*, 278 Mich App 210, 237; 749 NW2d 272 (2008). Likewise, a prosecutor may not urge jurors to convict as part of its civic duty or on the basis of its prejudices. *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995). Here, the prosecutor reminded the jury that it could no longer help Omar Johnson, who died on the night at issue, but that it could bring him justice:

Lastly, ladies and gentlemen, you know, you can't do anything about Omar Johnson's death now that he's died. You can't bring him back with your verdict no matter what it is, but what you can do in this case by using the evidence that you heard from that witness stand, using the law that the Judge gives to you and nothing more, just the evidence you heard, the testimony you heard, the exhibits and the law the Judge give to you, you can't bring him back, but what you can do in this case is to bring some justice to his death and that's all that we're asking. Thank you.

Although the prosecutor couched his request in terms of the evidence, the prosecutor implied that the jury would have to convict Coleman in order to do justice to the deceased victim. It would perhaps have been better for the prosecutor to refrain from reminding the jury that it cannot "do anything about Omar Johnson's death" except to "bring some justice to his death." Nevertheless, even if these remarks invoked some measure of sympathy for the victim, the prosecutor also plainly stated that the jury must render its verdict on the evidence and law. And even if we were to conclude that it was error to frame the issue in this way, any prejudice was minimal and could readily have been cured by a timely objection and curative instruction. Therefore, even if error, it would not warrant relief. *People v Hall*, 396 Mich 650, 655-656; 242 NW2d 377 (1976). And the trial court properly instructed the jury to decide the case on the evidence and the court's instructions and told the jury that the lawyers' arguments were not evidence. This instruction cured any minimal prejudice occasioned by the prosecutor's remarks. See *People v Abraham*, 256 Mich App 265, 279; 662 NW2d 836 (2003) ("Jurors are presumed to follow their instructions, and instructions are presumed to cure most errors.").

There were no errors warranting relief.

Affirmed.

/s/ Pat M. Donofrio
/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly