

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHATONE CHINN,

Defendant-Appellant.

UNPUBLISHED

May 19, 2005

No. 250149

Wayne Circuit Court

LC No. 03-001088-01

Before: Saad, P.J., and Fitzgerald and Smolenski, JJ.

MEMORANDUM.

Defendant appeals his jury trial convictions for first-degree premeditated murder,¹ possession of a firearm by a person convicted of a felony (felon in possession),² and possession of a firearm during the commission of a felony (felony-firearm).³ The trial court sentenced defendant to concurrent prison terms of life for the first-degree murder conviction and three to five years for the felon in possession conviction. Defendant also received a consecutive two years' imprisonment for the felony-firearm conviction. We affirm.

Defendant contends that his conviction should be reversed because the prosecutor committed misconduct in his opening statement when he stated that a person by the name of Keith Parker supplied defendant's name to the police, but failed to substantiate this assertion by calling Parker to testify.⁴

The record does not support the conclusion that the prosecutor acted in bad faith or that defendant was prejudiced by the challenged remark. The prosecutor had requested an order from the trial court to allow the police to bring Parker to court for a material witness bond hearing.

¹ MCL 750.316(1)(a).

² MCL 750.224f.

³ MCL 750.227b.

⁴ We review claims of prosecutorial misconduct de novo. *People v Abraham*, 256 Mich App 265, 272; 662 NW2d 836 (2003). If a prosecutor refers to evidence in his opening statement that is not substantiated, reversal is warranted if the defendant was prejudiced or the prosecutor was acting in bad faith. *People v Wolverson*, 227 Mich App 72, 77; 574 NW2d 703 (1997).

That request stated that Parker had personal knowledge of a fight between defendant's alleged accomplice and the deceased, and that defendant had been seen on the day of the murder carrying a gun. Furthermore, the prosecutor told the trial court at the close of proofs that he had diligently attempted to locate Parker. Obviously, that the prosecution ultimately did not call Parker does not support the speculative assertion that the prosecutor never had such an intention. Indeed, the prosecutor could reasonably have decided, at the close of proofs, that given the weight of the evidence presented, he no longer needed to pursue Parker as a witness. Furthermore, the weight of the evidence presented against defendant undermines any conclusion that defendant was prejudiced by the remarks. Moreover, the trial court repeatedly instructed the jury that opening statements were not evidence and that they could only rely on evidence in reaching a decision. Juries are presumed to follow the instructions given to them by the court. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998).

Defendant also asserts that his right of confrontation was violated when Parker was not called. However, defendant specifically rejected the trial court's offer to adjourn the trial so that Parker could be found and compelled to testify. Thus, defendant waived this issue for appeal. *People v Smith*, 33 Mich App 360, 362; 189 NW2d 814 (1971).

Affirmed.

/s/ Henry William Saad
/s/ E. Thomas Fitzgerald
/s/ Michael R. Smolenski