

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH MONROE NORTON, JR.,

Defendant-Appellant.

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UNPUBLISHED

April 30, 1996

No. 177048

LC No. 94-006646-FC

Before: Sawyer, P.J., and Neff and R. D. Gotham,\* JJ.

PER CURIAM.

Defendant appeals as of right from his conviction for second-degree murder, MCL 750.317; MSA 28.549, and sentence of twenty-two to thirty years in prison. We affirm.

I

Defendant first argues that the evidence against him was insufficient to support his conviction. We disagree.

When reviewing a sufficiency of the evidence claim, we examine the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. People v Wolfe, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992).

The mere fact that the autopsy in this case failed to definitively demonstrate that the victim's death was the result of a homicide is not, contrary to defendant's position, controlling. The prosecutor need not disprove all theories of innocence, but is only responsible for proving its own case beyond a reasonable doubt. See People v Carson, 189 Mich App 268, 269; 471 NW2d 655 (1991). Here, when viewed in a light most favorable to the prosecutor, defendant's admission that he buried the three-

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\* Circuit judge, sitting on the Court of Appeals by assignment.

year old victim, along with evidence of defendant's treatment of the victim just before her death, provides sufficient evidence to support the jury's verdict.

## II

Defendant next argues that the trial court erred in allowing certain rebuttal testimony. We disagree.

We review the trial court's determination to admit rebuttal testimony for an abuse of discretion. See *People v Bettistea*, 173 Mich App 106, 126; 434 NW2d 138 (1985).

Although plaintiff's initial expert did testify as to the cause of death, it was defendant's expert, on direct examination, who put the matter of the victim's health directly at issue. Therefore, we find no abuse of discretion because the prosecutor's rebuttal evidence was introduced to weaken or impeach matters defendant put at issue during his case in chief. *Id.*

## III

Next, defendant asserts that the trial court erred in allowing certain bad acts evidence into the record. We find no error.

The only alleged errors preserved for appeal related to testimony describing defendant's reasons for punishing, and the manner in which he punished, the victim during the period of time shortly before he buried her. We find this evidence to be relevant to defendant's motive and modis operandi, not merely to his character to perform these acts. Further, we find the evidence highly relevant to whether defendant committed the crimes. Finally, we do not find that the probative value of the evidence was substantially outweighed by its prejudicial effect. *People v VanderVliet*. 444 Mich 52; 508 NW2d 114 (1993).

Also, we conclude that this evidence was properly admitted, regardless of the rationale employed by the trial court. See *Gray v Pann*, 203 Mich App 461, 464; 513 NW2d 154 (1994).

## IV

We have carefully reviewed defendant's remaining claims on appeal and conclude none require reversal.

Affirmed.

/s/ David H. Sawyer

/s/ Janet T. Neff

/s/ Roy D. Gotham