

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES EARNEST RUMSEY, JR.

Defendant-Appellant.

UNPUBLISHED

June 11, 1996

No. 149096, 149434, 158832

LC No. 91-58046-FH

89-52389-FH

Before: Hoekstra, P.J., and Michael J. Kelly and J.M. Graves, Jr.,* JJ.

PER CURIAM.

A jury convicted defendant of second-degree murder, MCL 750.317; MSA 28.549 and habitual offender second, MCL 769.10; MSA 28.1082. Defendant pleaded guilty to a probation violation stemming from the murder conviction. Defendant was sentenced to thirty-seven and one-half years to seventy-five years on the murder conviction and eighty to one hundred twenty months on the probation violation. Defendant appeals by right. We affirm.

Defendant first argues that the trial court's refusal to give a requested self-defense instruction was error requiring reversal. We disagree. Although the evidence might be construed as showing defendant inflicted knife wounds in self-defense, there was no evidence that defendant choked the victim in self-defense but the unrebutted medical evidence showed that strangulation was the cause of death. Thus, there was no evidence to support a self-defense instruction. *People v Etheridge*, 196 Mich App 43, 56; 492 NW2d 490 (1992).

Defendant next argues that he was denied a fair trial because he was forced to appear before the jury in leg irons and by his counsel's failure to object to defendant's appearance in restraints. Defendant failed to preserve this issue because nothing in the record shows that any member of the jury saw defendant in leg irons. *People v Marsh*, 108 Mich App 659, 677-678; 311 NW2d 130 (1981). This Court will not consider the *ex parte* affidavits that defendant has submitted for the first time on

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

appeal. MCR 7.210(A)(1); *People v Pawelczak*, 125 Mich App 231; 336 NW2d 453 (1983); *People v White*, 411 Mich 366, 391; 308 NW2d 128 (*1981).

Because defendant presents no meritorious issue on his murder conviction, we need not consider defendant's argument that his probation violation should be reversed if this Court were to reverse his murder conviction.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Michael J. Kelly

/s/ James M. Graves, Jr.