

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM ANTHONY FALLS,

Defendant-Appellant.

UNPUBLISHED

July 2, 1996

No. 179677

LC No. 94-000469

Before: Murphy, P.J., and Reilly, and C.W. Simon, Jr.*, JJ

PER CURIAM.

Defendant was convicted of first-degree felony murder, MCL 750.316; MSA 28.548(2), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to life imprisonment for murder and two-years of imprisonment for the felony firearm. He appeals as of right. We affirm.

Defendant contends that he was denied due process and the right to a fair trial because the prosecution objected to the jury instructions and asked for an additional instruction in the presence of the jury and the court complied. Defendant has not cited any authority to support his position that his constitutional rights were violated in this instance. A party may not leave it to this Court to search for authority to sustain or reject its position. *People v Fowler*, 193 Mich App 358, 361; 483 NW2d 626 (1992). We agree with the prosecution that the additional instruction was appropriate and the fact that the request was made in the presence of the jury did not deny defendant a fair trial. As for defendant's contention that counsel's failure to object constituted ineffective assistance of counsel, we are not persuaded that defendant has demonstrated prejudice. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

Defendant claims that he was denied a fair trial and due process when the court responded to the jury's request to hear the testimony of the prosecution's chief witness by playing the tape of her testimony in its entirety. This Court reviews the trial court's decision to play back testimony of a trial witness under an abuse of discretion standard. *People v Howe*, 392 Mich 670; 221 NW2d 350

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

(1974). Defendant claims that the court's action placed undue emphasis on the witness' testimony. However, a court cannot refuse to grant a jury's request for fear of placing too much emphasis on the testimony. *Id.* at 676. We find no abuse of discretion. As for defendant's claim that counsel's failure to object constituted ineffective assistance of counsel, we are not persuaded that defendant has demonstrated prejudice. *Pickens, supra.*

Defendant argues that the court erred in denying his request for a directed verdict on the charges of first-degree murder and assault with intent to commit murder. The test for determining whether a motion for a directed verdict should be granted is whether, viewed in the light most favorable to the prosecution, the evidence is sufficient to permit a rational trier of fact to find the essential elements of the crime to be proven beyond a reasonable doubt. *People v Herbert*, 444 Mich 466, 473-474; 511 NW2d 654 (1993). We disagree with defendant's assertion that there was insufficient evidence of the robbery or attempted robbery to support the felony-murder charge. The evidence presented was sufficient for a rational trier of fact to find that defendant came to the house under the pretense of selling the victim a television set and that defendant killed the victim while robbing or attempting to rob him. Defendant argues that the evidence of intent to kill the murder victim's companion was insufficient to submit the assault with intent to murder charge to the jury. Although defendant was acquitted of assault with intent to murder, we conclude that the court properly denied defendant's motion for a directed verdict. Viewing the evidence presented at trial, particularly the testimony of the companion and her daughter, in the light most favorable to the prosecution, a rational trier of fact could have found that defendant shot at the companion from a distance of one or two houses away and from that evidence, inferred an intent to kill.

Defendant claims that the prosecutor "testified in the guise of argument" concerning matters of his own personal knowledge. We have reviewed the statements made by the prosecutor and conclude that they did not deny defendant a fair trial. The prosecutor's arguments related reasonable inferences from the evidence to his theory of the case. *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995).

In addition to the claims addressed above, defendant also asserts that counsel was ineffective for failing to advise defendant of his constitutional right to testify and that defendant's decision, rather than counsel's, was final. Defendant's motion for a remand for the purpose of allowing him to request a *Ginther*¹ hearing in the trial court was denied by this Court on April 19, 1995, for failure to persuade this Court of the necessity of a remand at that time. Although defendant claims that he has "identified issues on which a testimonial record needs to be made for appellate review," he did not support the motion with an affidavit or offer of proof regarding the facts to be established at the hearing. MCR 7.211(C)(1)(a)(ii). The record before us does not establish that counsel's performance fell below an objective standard of reasonableness and that the representation so prejudiced defendant that he was denied a fair trial. *Pickens, supra.*

Affirmed.

/s/ William B. Murphy

/s/ Maureen Pulte Reilly
/s/ Charles W. Simon, Jr.

¹ *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).