

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES FRANK BAILEY,

Defendant-Appellant.

UNPUBLISHED

July 9, 1996

No. 175901

LC No. 93-010638

Before: Wahls, P.J., and Young and H.A. Beach,* JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions of possession of a firearm during the commission of a felony; MCL 750.227b; MSA 28.424(2), and first-degree murder, MCL 750.316; MSA 28.548. Defendant was sentenced to consecutive terms of two years on the felony-firearm conviction and life in prison on the first-degree murder conviction. We affirm.

I

Defendant argues that, due to his intoxication, there was insufficient evidence to support his conviction of first-degree murder. We disagree.

The element of premeditation and deliberation may be inferred from the circumstances surrounding the killing, including: (1) the prior relationship of the parties; (2) the defendant's actions before the killing; (3) the circumstances of the killing itself; and (4) the defendant's conduct after the homicide. *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995). Voluntary intoxication is a defense to first-degree murder if it rendered defendant unable to form the requisite intent. *People v Garcia*, 398 Mich 250, 259; 247 NW2d 547 (1976). After carefully reviewing the record in the light most favorable to the prosecution, including the nature of the deceased's wounds and defendant's actions before and after the killing, there was sufficient evidence presented for a reasonable juror to find beyond a reasonable doubt that defendant acted with premeditation and deliberation. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992).

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

II

Defendant argues that defense counsel was ineffective in failing to present an intoxication defense which would have negated the premeditation and deliberation element of first-degree murder, in failing to investigate the possibility that the deceased's death was a suicide, and in failing to object to the prosecutor's closing arguments. We disagree.

Defense counsel questioned three witnesses regarding defendant's drinking and requested the trial judge to consider lesser included offenses. The record also shows that the deceased was autopsied and that suicide was ruled out in favor of homicide due to the position of the entry and exit wounds. Further, the prosecutor's alleged misconduct was harmless given that defendant was not tried by a jury. *People v Wofford*, 196 Mich App 275, 282; 492 NW2d 747 (1992). Therefore, the record does not support defendant's claim of ineffective assistance. *People v Pickens*, 446 Mich 298, 302; 521 NW2d 797 (1994).

III

Lastly, defendant argues that he was denied a fair and impartial trial due to prosecutorial misconduct during closing arguments. As discussed above, this error was harmless. Further, defendant failed to object below. Because a proper instruction would have cured any alleged prejudice, no manifest injustice will result from our failure to review defendant's claims of misconduct. *People v Warren (After Remand)*, 200 Mich App 586, 589; 504 NW2d 907 (1993).

Affirmed.

/s/ Myron H. Wahls
/s/ Robert P. Young, Jr.
/s/ Harry A. Beach