

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOE LEE COOPER,

Defendant-Appellant.

UNPUBLISHED

August 23, 1996

No. 172681

LC No. 93-002382-FC

Before: McDonald, P.J., and Markman and C. W. Johnson*, JJ.

PER CURIAM.

Following a bench trial defendant was convicted of second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and sentenced to prison terms of from fifteen to twenty-five years and a two year consecutive term respectively. Defendant now appeals as of right from his convictions and sentences. We affirm.

The record reveals the prosecution made a good-faith endeavor to secure the testimony of the absent res gestae witness, *People v Watkins (aft Rem)*, 209 Mich App 1; 530 NW2d 111 (1995); that she was unavailable at trial; and that defendant had an adequate opportunity to cross examine the witness at his preliminary examination. MRE 804(b)(1); *People v Cooper*, 168 Mich App 62; 423 NW2d 597 (1988) rev'd on other grounds 433 Mich 862; 444 NW2d 527 (1989). The trial court did not abuse its discretion when it admitted the witness's former testimony into evidence. *People v Davis*, 199 Mich App 502; 502 NW2d 457 (1993).

Defendant's failure to move for the suppression of any evidence on any ground below waives review of this issue on appeal. *People v Carroll*, 396 Mich 408; 240 NW2d 722 (1976). No manifest injustice will result. See *People v Carey*, 110 Mich App 187; 312 NW2d 205 (1981); *People v Parr*, 197 Mich App 41; 494 NW2d 768 (1992).

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

Finally the sentencing court's scoring of the guidelines is supported by evidence within the record, *People v Derbeck*, 202 Mich App 443; 509 NW2d 534 (1993) and defendant's sentence is proportionate to both the offense and the offender. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

Affirmed.

/s/ Gary R. McDonald
/s/ Stephen J. Markman
/s/ Charles W. Johnson