STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JASON SCOTT ROOF,

Defendant-Appellant.

UNPUBLISHED
September 27, 1996

No. 180763
LC No. 93-2856-FC

Before: Markman, P.J., and McDonald and M. J. Matuzak,* JJ.

PER CURIAM.

Defendant appeals by right his jury conviction for first-degree murder, MCL 750.316; MSA 28.548. Defendant confessed to the stabbing homicide of the 2½-year old son of an acquaintance and was charged with open murder. He was sentenced to the mandatory term of life imprisonment. We affirm.

Defendant first contends that the evidence presented at trial was insufficient to support his conviction, claiming that the jury improperly ignored his own testimony that his actions at the time of the killing were spontaneous and that he had no intent to kill. We disagree. Premeditation and deliberation may be inferred from the circumstances surrounding a killing, including the prior relationship between the parties and the defendant's actions leading up to, during, and after the killing. *People v Morris*, 202 Mich App 620, 622-623; 509 NW2d 865 (1993), vacated on other grounds 445 Mich 860 (1994). Evidence presented at trial revealed that defendant had a particular dislike of the victim and had repeatedly threatened to harm him; that defendant first tried to suffocate the victim with a pillow and, when suffocation did not work, retrieved a knife from across the room and stabbed the victim through the heart; that defendant put the victim in the back of his pickup truck even while the victim gasped for breath; and that defendant went to great lengths to methodically conceal what he had done, showing a decided lack of remorse upon confessing. Viewing the evidence in the light most favorable to the prosecution, we find that a rational trier of fact could have found the evidence sufficient to prove the essential elements of the crime beyond a reasonable doubt. *People v Medlyn*, 215 Mich App 338, 340; ___ NW2d ___ (1996).

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

Defendant next contends that the trial court abused its discretion when it admitted into evidence an edited version of his video taped interview with police, claiming that failure to present the entire tape was prejudicial. Since defendant failed to object to this admission below, we need not review this issue absent manifest injustice. *People v King*, 210 Mich App 425, 432; 534 NW2d 534 (1995). We find no manifest injustice because the prosecutor apprised the jury that the tape had been edited and the trial court admitted into evidence the omitted portions of the interview as well as the entire unedited tape.

Defendant next contends that the trial court improperly failed to instruct the jury on a controlling issue of the case when it did not give an instruction regarding the evidentiary weight to be given to his video taped statement, claiming that this instruction pertained to his state of mind at the time of the killing. Since defendant failed to object to this omission below, we need not review this issue absent manifest injustice. *People v Haywood*, 209 Mich App 217, 230; 530 NW2d 497 (1995). We find no manifest injustice because the trial court gave instructions on, and explicitly directed the jury's attention to, the issue of defendant's state of mind at the time of the killing.

Defendant next contends that the trial court abused its discretion when it refused to allow him to call a pharmacological expert witness. We disagree. The proposed witness would have given testimony regarding side effects of defendant's drug regimen, facts that had already been introduced by a previous defense witness. Furthermore, these facts were never directly disputed by the prosecution. We find no abuse of discretion in disallowing the presentation of cumulative and undisputed evidence. *People v Fortson*, 202 Mich App 13, 18; 507 NW2d 763 (1993); MRE 403.

Defendant next contends that the trial court improperly required defense counsel to declare his own witness hostile, claiming that his counsel instead should have been able to ask leading questions pursuant to MRE 611(c)(3). We disagree. We note that defendant failed to object to the trial court's limitation on the manner of questioning and therefore, we need not review this issue absent manifest injustice. *People v Adamski*, 198 Mich App 133, 143; 497 NW2d 546 (1993). Furthermore, at no time did the trial court require defense counsel to declare his witness hostile. Rather, the trial court merely admonished defense counsel, quite inconspicuously, that he would not be permitted to continue to lead his own witness. Moreover, we note that MRE 611(c)(3) requires that the witness be identified as hostile *when called* in order for leading questions to be appropriate, which was not the case here. We find no manifest injustice here.

Defendant next contends that the trial court abused its discretion by allowing a defense witness to give expert testimony on cross-examination without prior qualification as an expert. We agree. Defendant called a mental health clinician as part of his case-in-chief; however, the witness was not offered as an expert. On cross-examination, the trial court permitted the witness to testify that defendant was not mentally ill. Such a specialized opinion by a lay witness cannot be rationally based on the witness' perception, MRE 701, and the trial court abused its discretion when it allowed the witness to so testify. *People v McMillan*, 213 Mich App 134, 137; 539 NW2d 553 (1995). However, we also find that the trial court's error was harmless, precluding reversal, since there was no miscarriage of justice. Substantial evidence had already been introduced establishing an absence of mental illness on defendant's part.

Finally, defendant contends that he was denied the effective assistance of counsel at trial, claiming that his counsel erred by calling certain witnesses part of whose testimony undermined his own case. We disagree. We note that defendant offers no concrete evidence to support his assertions that his trial counsel was ineffective. Furthermore, it is to be expected, in the normal course, that the cross-examination of defense witnesses will often elicit some testimony that is unhelpful to the defense's theory of the case. Defendant has not overcome the presumption that his counsel's actions constituted reasonable trial strategy, nor has he shown in some other way that his counsel's performance fell below an objective standard of reasonableness so as to deprive him of a fair trial. *People v LaVearn*, 448 Mich 207, 216; 528 NW2d 721 (1995); *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994).

Because we find only one error and conclude that it was harmless, we need not address defendant's contention that cumulative error denied him a fair trial.

Affirmed.

/s/ Stephen J. Markman
/s/ Gary R. McDonald
/s/ Michael J. Matuzak