STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH D. STONEBURNER,

Defendant-Appellant.

UNPUBLISHED
December 13, 1996

No. 178633
Menominee County
LC No. 92-001812-FC

Before: Gribbs, P.J., and MacKenzie and Griffin, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of kidnapping, MCL 750.349; MSA 28.581, and sentenced to twelve to twenty-five years' imprisonment. He appeals as of right. We affirm.

This case involves an incident in which defendant abducted his estranged wife, Vicki Fullerton. Defendant and Fullerton were married in 1984, separated in April 1992, and divorced in May 1993. On September 28, 1992, Fullerton went to pick up their son at a day care center when defendant grabbed her, put a knife near her throat, forced her into her car, and drove her away. Fullerton was initially prevented from jumping out, but was eventually able to escape. Fullerton was also allowed to testify about an incident that occurred in May 1992, shortly after the couple separated, in which defendant came to Fullerton's apartment and demanded to be let in. When Fullerton refused, defendant fired three gunshots into the lock, kicked in the door, held a gun to her head, and ordered her to leave with him. Defendant took Fullerton to the parking lot and was shortly after arrested without incident. The record indicates that defendant pleaded no contest to felonious assault and discharging a firearm in a building as a result of that incident and was sentenced on the convictions in February 1993.

Defendant raised an insanity defense. Clinical psychologist Robert Moore testified that defendant suffered from a depressive disorder that caused him to "snap" and be unaware of what he was doing. Prosecution witness Dr. Thomas Shazer testified on rebuttal that, while defendant was depressed, he was not insane at the time of the crime and that he was able to conform his conduct to the requirements of the law.

On appeal, defendant first contends that his constitutional right to a speedy trial was violated by the twenty-two-month delay between his arrest and his July 1994 trial. The claim is without merit. Much of the delay was caused by defendant's request for an independent psychiatric evaluation and his requests for adjournments to find a psychiatrist or psychologist willing to take the case. A defendant should not prevail on a speedy trial claim where the delay was attributable to the extra time the defendant needed to prepare an insanity defense. See *People v Jackson*, 171 Mich App 191, 200-201; 429 NW2d 849 (1988). Further, defendant did not file a demand for a speedy trial until immediately before trial, *People v Gravedoni*, 172 Mich App 195, 198; 431 NW2d 221 (1988), and he has failed to explain how his defense would have been bolstered by additional witnesses who left the area before the case went to trial. Because there is nothing indicating that the delay impaired defendant's defense, we find no violation of his constitutional right to a speedy trial. See *People v Simpson*, 207 Mich App 560, 563-564; 526 NW2d 33 (1994).

In a related argument, defendant also claims that his statutory right to a speedy trial under the 180-day rule, MCL 80.131; MSA 28.969(1), was violated. Under the 180-day rule, the prosecution must take good faith action to ready the case for trial within 180 days of notifying the Department of Corrections that an untried warrant is pending against an inmate. *People v Finley*, 177 Mich App 215, 219; 441 NW2d 774 (1989). Delays caused by the defendant will not trigger dismissal under the 180-day rule, however. *Id.*, p 218; *People v Johnson*, 115 Mich App 630, 634; 321 NW2d 752 (1982). In this case, the delay from January 1993 until August 1993 was due to defense counsel's requests to adjourn for more time to secure an independent psychiatric examination, and must be attributed to defendant. Further delays resulted from the appointment of new defense counsel and from a motion by that attorney to remand the case for a preliminary examination. Thus, any delay through the December 3, 1993 preliminary examination was caused by defendant and is not cause for dismissal under the 180-day rule. The prosecution then took good faith action in March 1994 to ready the case for trial by seeking a ruling on the admissibility of evidence concerning defendant's May 1992 assault of Fullerton. Accordingly, there was no 180-day rule violation. *Finley*, *supra*.

Defendant next argues that the trial court abused its discretion under MRE 404(b) in allowing evidence of the May 1992 incident at Fullerton's apartment. According to defendant, the probative value of the evidence was substantially outweighed by its prejudicial effect. See *People v VanderVliet*, 444 Mich 52, 74-75; 508 NW2d 114 (1993). We find no abuse of discretion. As noted by the trial court, the evidence was relevant to prove defendant's intent and motive in the kidnapping. Further, taken in context, it was not so prejudicial as to preclude its admission. Compare *People v Cadle*, 204 Mich App 646; 516 NW2d 520 (1994), remanded on other grounds 447 Mich 1009; 526 NW2d 918 (1994); *People v Biggs*, 202 Mich App 450; 509 NW2d 803 (1993).

Defendant also contends that the trial court abused its discretion in allowing the prosecutor to present rebuttal evidence concerning defendant's claim of insanity. Specifically, defendant argues that because the prosecutor did not file a notice of intent to rebut the insanity defense until March 1994 – three months after the statutory deadline set forth at MCL 750.20a(7); MSA 28.1043(1)(7) – the court should have excluded the evidence. We disagree. Where a prosecutor's rebuttal notice is late, a trial court has the discretion to allow the evidence to be introduced. *People v Jurkiewicz*, 112 Mich App 415, 419; 316 NW2d 440 (1982). Even if the prosecutor fails to file a notice, the trial court may still

permit rebuttal evidence if the defendant was notified in some other way in advance of trial that the prosecution intended to produce such evidence. See *People v Wallace*, 160 Mich App 1, 5; 408 NW2d 87 (1987). Here, defendant does not, and we cannot, identify how he was prejudiced by the late rebuttal notice, especially in light of the fact that he received the late notice over three months before the start of trial. Defendant is not entitled to relief on this ground.

Defendant next argues that the trial court's decision to allow the prosecution to introduce photographs and other exhibits not timely provided to defendant, as required under a pretrial discovery agreement, requires reversal. Again, we disagree. Noncompliance with discovery orders and appropriate remedies are subject to the discretion of the trial court, and suppression is necessary only in the most egregious cases. *People v Clark*, 164 Mich App 224, 229-230; 416 NW2d 390 (1987). Here, the prosecution's violation of the discovery agreement was not so egregious as to require suppression. The defense focused on an insanity claim; defendant did not dispute that he kidnapped Fullerton. Thus, much of the evidence, such as photographs of the crime scene and Fullerton's car, were of little value to the preparation of the defense case. The only items relevant to the insanity defense that defendant did not receive were the curriculum vitae of his own expert, the curriculum vitae of the prosecution's expert, and scholarly works authored by the prosecution's expert, the latter of which the prosecution did not have. Defendant could have obtained the curriculum vitae of his own witness and does not suggest how the non-production of the prosecution's expert's curriculum vitae affected his ability to prepare his case. Because the discovery violation was not so egregious as to require suppression of the evidence, we find no abuse of discretion in the trial court's decision to allow its admission.

We also reject defendant's claim that he is entitled to a new trial because, during voir dire, the jury members heard a prospective juror indicate that, based on media coverage, he believed defendant was guilty. Comments during voir dire require a new trial only where they are so strong as to affect the impartiality of the jury or disqualify them from exercising the powers of reason and judgment. *People v Sowders*, 164 Mich App 36, 47; 417 NW2d 78 (1987). See also *People v Marsh*, 108 Mich App 659; 311 NW2d 130 (1981). We are satisfied that the remark in this case was not so inflammatory as to affect the impartiality of the jury, especially since the trial court made it clear that people should not be convicted based on newspaper articles. We find no abuse of discretion.

Finally, defendant argues that he is entitled to a remand for a *Ginther* hearing [*People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973)] to determine why his original trial counsel delayed so long in securing a psychiatric expert. The claim is without merit. As previously noted, the delay did not prejudice defendant, and in the absence of such prejudice, defendant cannot

establish that counsel was ineffective under *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994). Thus, a remand would serve no valid purpose.

Affirmed.

/s/ Roman S. Gribbs
/s/ Barbara B. MacKenzie
/s/ Richard Allen Griffin