STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY WAYNE TAYLOR,

Defendant-Appellant.

UNPUBLISHED
December 13, 1996

No. 181729
LC No. 94-004181

Before: MacKenzie, P.J., and Markey and J.M. Batzer*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of felony murder, MCL 750.316; MSA 28.548, and sentenced to life imprisonment without parole. He appeals as of right. We affirm.

Defendant first argues that there was insufficient evidence to support his conviction for felony-murder. We disagree. When reviewing a challenge to the sufficiency of the evidence, this Court views the evidence in a light most favorable to the prosecution to determine if a rational trier of fact could find the elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

In this case, it is undisputed that defendant stabbed the victim several times, killing him. It is also uncontested that, after he stabbed the victim, defendant stole his Ford Probe, microwave, radio, video recorder and television set and attempted to sell the items. Hence, there was sufficient evidence from which a jury could infer that the victim's killing and the underlying felony of larceny were so closely connected in point of time, place, and causal relation that the homicide was incident to the felony and associated with it as one of its hazards. *People v Brannon*, 194 Mich App 121, 126; 486 NW2d 83 (1992). The question regarding precisely when defendant's larcenous intent was first formed was for the jury to decide. *Id.*

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

Defendant next argues that there was sufficient evidence to warrant an instruction on self-defense and that the trial court had an affirmative obligation to give the jury that instruction. We disagree. Because defendant did not request the instruction, our review is limited to the issue whether relief is necessary to avoid manifest injustice. *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993). It is not, since the evidence at trial did not support the instruction. *People v Caulley*, 197 Mich App 177, 184; 494 NW2d 853 (1992). There was no testimony suggesting that defendant was in imminent danger or that there was a threat of serious bodily harm. *People v George*, 213 Mich App 632, 634-635; 540 NW2d 487 (1995); *People v Fortson*, 202 Mich App 13, 19-20; 507 NW2d 763 (1993). Defendant's claim that he was denied effective assistance of counsel when his attorney did not request the self-defense instruction fails for the same reason. Counsel's failure to request an inapplicable instruction was not below an objective standard of reasonableness under prevailing professional norms and could not have affected the outcome of the trial. *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994).

Defendant also asserts that he was denied a fair and impartial trial due to prosecutorial misconduct resulting from statements made during closing argument. However, defendant did not object to the statements made by the prosecutor. Therefore, appellate review is precluded unless our failure to consider this issue would result in a miscarriage of justice. *People v Austin*, 209 Mich App 564, 570; 531 NW2d 811 (1995). We have reviewed the comments complained of by defendant and conclude that defendant was not denied a fair and impartial trial. Thus, we find no miscarriage of justice.

Defendant's final claim concerns the admission of evidence that he stole a television a few days after the murder in order to buy drugs. According to defendant, the evidence was prejudicial and its admission was an abuse of discretion. Under the circumstances of this case, we disagree. The prosecution offered the evidence for the purpose of showing defendant's motive for the murder, i.e., to give him the opportunity to take the victim's personal belongings in order to sell them and support his drug habit. Evidence of a subsequent bad act may be admitted to show a defendant's motive or plan for committing the charged crime. MRE 404(b)(1); *People v VanderVliet*, 444 Mich 52, 61-62 n 9; 508 NW2d 114 (1993); *People v Catanzarite*, 211 Mich App 573, 578; 536 NW2d 570 (1995). The evidence was relevant and probative to the issue at hand. *VanderVliet*, *supra*, pp 74-75; *Catanzarite*, *supra*, pp 578-579. The trial court did not abuse its discretion in admitting the evidence.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Jane E. Markey
/s/ James M. Batzer