STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANIEL JOHN BROOKS,

Defendant-Appellant.

UNPUBLISHED
December 17, 1996

No. 184404
Ingham County
LC No. 94-068002-FC

Before: Sawyer, P.J., and Markman and H. A. Koselka,* JJ.

PER CURIAM.

Defendant was convicted by jury of first-degree felony murder, MCL 750.316; MSA 28.548, and was sentenced to the mandatory term of life imprisonment without parole. We affirm.

This conviction arose from the death of David Converse, who was found dead in his home in Lansing on July 15, 1994. A number of items were missing from the home. It was undisputed that defendant, who had earlier corresponded with the victim while he was a prisoner, had met the victim in Lansing the previous day and had gone to his home. The victim was a gay man and periodically had provided gifts to several male prison inmates, including defendant. Two prison inmates, Ronald Wainwright and Joseph Lunsford, testified that, while they were imprisoned with defendant, he expressed a desire to rob the victim after being released from prison. Wainwright further asserted that defendant said he would stab the victim "if it came down to it or whatever." Lunsford similarly maintained that defendant said that, if he had any trouble with the victim, he would kill him.

Defendant argues that the trial court improperly limited his cross-examination of Wainwright and Lunsford. Wainwright had written letters to the victim that included descriptions of the two of them engaging in imagined sexual activity. Further, there was some information tending to indicate that Lunsford and the victim had once had a sexual relationship. The admission of evidence is reviewed for an abuse of discretion. *People v Crump*, 216 Mich App 210, 211; 549 NW2d 36 (1996). We

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

conclude that the trial court did not abuse its discretion or violate defendant's Sixth Amendment right to confrontation by precluding defense counsel from cross-examining Wainwright and Lunsford regarding whether they were romantically attached to or involved with the deceased. *People v Hackett*, 421 Mich 338, 347; 365 NW2d 120 (1984); *People v Minor*, 213 Mich App 682, 684; 541 NW2d 576 (1995). Neither the Sixth Amendment's Confrontation Clause nor due process grants a defendant an unlimited right to cross-examine on any subject. *Hackett*, *supra* at 347. While the trial court allowed defense counsel to elicit testimony making clear that Wainright and Lunsford had established a platonic or romantic relationship with the victim, it concluded that this provided sufficient information for the jury to evaluate their testimony for bias or fabrication without going into the dubiously relevant area of the details of their relationships. MRE 402; 403. Defendant has asserted no logical nexus between particular homosexual activities such as those described in Wainright's letters and the credibility of either Wainright or Lunsford. We are unable to find an abuse of discretion on the part of the trial court.

Defendant also asserts that the trial court improperly sustained an objection to defense counsel's attempt to ask the victim's mother on cross-examination whether the victim had previously been shot by a "jealous lover." Based on defense counsel's statement to the trial court, he did not seek to ask this question in order to bring out evidence that the "jealous lover" may have killed the victim. Rather, counsel essentially asserted that this was relevant evidence indicating that homosexual relationships might be particularly likely to lead to such acts of violence. The trial court did not abuse its discretion by sustaining the prosecution's objection to this question. *People v Crump*, 216 Mich App 210, 211; 549 NW2d 36 (1996); *People v McAlister*, 203, Mich App 495, 505; 513 NW2d 431 (1994).

Contrary to the implication of defendant's brief, his counsel was allowed to elicit testimony from witness Timothy Lukavski about when and under what circumstance he was in the deceased's house. In addition, the court did not abuse its discretion by concluding that calling witness "Brandon" to ask whether he was at the deceased's home on July 14 or 15, 1994, would have been an unreasonable waste of time, by precluding the needlessly cumulative questioning of Tom Welch about the victim's sexual orientation, by excluding irrelevant testimony about the number of cellular telephones in the victim's house or by excluding immaterial testimony regarding how the victim had his friends enter his house. *Crump*, *supra* at 211; *McAlister*, *supra* at 505.

Finally, contrary to defendant's argument, the trial court did not rule that defense counsel could not assert in his closing argument that the deceased was killed by an "irate parent." In fact, defense counsel stated in closing argument, without objection, "maybe somebody else did it" and argued that evidence about security precautions taken by defendant showed that he might have been fearful of one or more persons other than defendant. Regardless, the trial court would not have erred by precluding defense counsel from arguing that the deceased may have been killed by an irate parent or "irate father" (as opposed to arguing that the deceased may have been killed by some unknown person) because there was no evidence reasonably suggesting that an irate parent or "irate father" killed the deceased. *People v Kent*, 157 Mich App 780, 793; 404 NW2d 668 (1987).

Affirmed.

/s/ David H. Sawyer
/s/ Stephen J. Markman
/s/ Harvey A. Koselka