STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS BERNARD ROAT,

Defendant-Appellant.

UNPUBLISHED
March 7, 1997

No. 184180
Lapeer Circuit Court
LC No. 94-005174-FC

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

PER CURIAM.

Following a jury trial defendant was convicted of voluntary manslaughter, MCL 750.321; MSA 28.553 and was sentenced to seven to fifteen years' imprisonment. The conviction arose from defendant's fatal stabbing of his roommate, Robert Vaughn, during an altercation between the two men at their apartment. Defendant appeals by right. We affirm.

Defendant first contends the trial court abused its discretion by denying his motion for a mistrial. *People v Cunningham,* 215 Mich App 652; 546 NW2d 715 (1996). We disagree. Defendant fails to explain how he could have presented a stronger case of self-defense if the content of the testimony at issue had been disclosed to him earlier. A defendant has no right to testify falsely. *People v LaVearn,* 448 Mich 207; 528 NW2d 721 (1995).

Defendant next contends the trial court abused its discretion by denying his motion for a change of venue based on pretrial publicity. *People v Lee,* 212 Mich App 228; 537 NW2d 233 (1995). Again we disagree. The mere existence of pretrial publicity does not necessitate a change of venue. *Lee, supra*; *People v Passeno,* 195 Mich App 91; 489 NW2d 152 (1992). Defendant failed to demonstrate a pattern of strong community feeling against him or that the atmosphere surrounding the trial was such as would create a probability of prejudice. Moreover, defendant does not argue any of the jurors read, let alone were affected by the publicity. Defendant has failed to establish entitlement to a change of venue. *Lee, supra*; *Passeno, supra*.

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

We also find no abuse of discretion in the trial court's admission of testimony establishing that, on the night of the homicide, defendant had repeatedly touched a guest in his apartment in an offensive manner. *People v Crump*, 216 Mich App 210; 549 NW2d 36 (1996). The testimony was not admitted to show defendant had a propensity for aggressive conduct in general, and thus, that it was more likely he acted aggressively toward defendant. *People v VanderVliet*, 444 Mich 52; 508 NW2d 114 (1993). Instead the testimony was admitted to show defendant's state of mind a few hours before the murder.

Moreover, even if the court erred in admitting the evidence, the error would be harmless because it did not prejudice defendant. *People v Rodriquez*, 216 Mich App 329; 549 NW2d 359 (1996); see also *People v Lee*, 212 Mich App 228, 244; 537 NW2d 233 (1995).

Finally, defendant argues his seven-year minimum sentence was disproportionately severe. We disagree. Defendant's sentence was within the guidelines and is presumptively proportionate. *People v Williams (After Remand)*, 198 Mich App 537; 499 NW2d 404 (1993). The fact defendant does not have a prior criminal record is insufficient to overcome this presumption. *People v Moseler*, 202 Mich App 296; 508 NW2d 192 (1993)

Affirmed.

/s/ Richard Allen Griffin
/s/ Gary R. McDonald
/s/ Charles W. Johnson