

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,,

v

TIMOTHY JON SPYTMA,

Defendant-Appellant.

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UNPUBLISHED

May 9, 1997

No. 188253

Muskegon Circuit Court

LC No. 75-18765-FY

Before: Taylor, P.J., and Hood and Gribbs, JJ.

PER CURIAM.

This case involves a crime that occurred over twenty years ago and is before a panel of this Court for the sixth time. This is the third opinion to be issued in this matter. On this appeal, defendant contends that his waiver of jury trial was invalid, that there was no valid waiver of juvenile court jurisdiction, and that his counsel was ineffective. We affirm.

The facts of this case are set out in the lower court's detailed opinion and in one of the unpublished per curiam opinions issued by this Court. *People v Spytma*, #93377, rel'd 8-28-87. The underlying crime occurred in December 1974. After consuming a quantity of barbiturates, defendant and Michael Saxton, both fifteen years old, went to the playground of an elementary school armed with rifles and a machete. Defendant and Saxton were sent home after being apprehended by school officials.

At defendant's suggestion, defendant and Saxton then broke into the home of defendant's next door neighbor. Defendant provided gloves for himself and Saxton so that they would not leave fingerprints. While defendant and Saxton were inside the home, the mother of the family (decedent) returned home. She asked defendant what he was doing there, and defendant grabbed her, struck her in the head and knocked her unconscious. Defendant and Saxton blindfolded decedent and carried her to a bed in one of the bedrooms. While Saxton sexually abused decedent, defendant brought in a bottle of liquor. Saxton eventually broke the liquor bottle over decedent's head, struck her in the head with a baseball bat, and left her nude body lying on the floor beside the bed. Defendant loaded decedent's car with two television sets, a stereo, a jar of pennies, two checkbooks and two rifles. Defendant returned

to the bedroom and cut decedent's wrists with a knife, "to put her out of her misery." Decedent's clothes were left draped down the front of the kitchen cabinets.

Decedent's body was discovered by her son. There were ink marks on her breasts and abdomen, with obscene graffiti scrawled across her body. Decedent's body was extensively bruised and lacerated. Her skull was badly fragmented. A portion of her skull, more than three inches square, was missing and her brain was exposed. There was a quarter and a large amount of sperm in decedent's vagina, and she had been sexually assaulted with a baton. Decedent died as a result of a massive hemorrhage from the damage to her skull and brain

Defendant and Saxton were apprehended in a vehicle belonging to decedent's husband after they ran a stop sign, hit another vehicle, and crashed into a telephone pole. Inside the vehicle, police found the stolen articles and a bloody knife.

In the presence of his attorney, after being advised of his *Miranda*<sup>1</sup> rights, defendant confessed to police that he and Saxton broke into decedent's home with the intent to steal, and admitted to struggling with decedent after she returned home unexpectedly. Defendant admitted having a knife, referred to the baseball bat, and spoke of the sexual assault and the quarter in decedent's vagina, but said that "someone else" had done it. Defendant knew decedent was dead before he left the house.

Following a juvenile waiver hearing, defendant was charged with felony murder. Defendant signed a written form waiving his right to a jury trial. The circuit judge rejected defendant's insanity defense, and defendant was convicted of first-degree felony murder and sentenced to life imprisonment. Codefendant Saxton was tried before a different judge. Saxton was also convicted of first-degree felony murder and sentenced to life imprisonment.

Defendant's conviction and sentence were affirmed by a panel of this court in an unpublished per curiam opinion, #31487, rel'd 2-13-78. On August 24, 1982, this Court issued a published opinion reversing codefendant Saxton's first-degree murder conviction on the basis that the underlying felony, burglary, was committed during the day rather than at nighttime. Saxton's case was remanded for entry of a second-degree murder conviction and for resentencing. *People v Saxton*, 118 Mich App 681; 325 NW2d 795 (1982). Defendant filed a motion and, later, an appeal asking for the same relief, and this Court vacated his first-degree conviction and remanded for entry of a conviction of second degree murder and resentencing. The circuit court again sentenced defendant to life imprisonment and, after more remands for explanation of defendant's sentence, his sentence was ultimately affirmed by a panel of this Court.

In this appeal, almost eight years after this Court affirmed defendant's sentence, defendant contends that the trial court lacked jurisdiction to conduct a nonjury trial in the absence of a valid jury waiver. Defendant acknowledges that he signed a written waiver, but asserts that he did not sign it in open court. No transcript of a waiver hearing in this matter can be located.

Although the requirements of the waiver statute are to be strictly construed, we do not agree that the waiver process *creates* jurisdiction, and reject defendant's suggestion that a defect in the jury-

waiver process deprives the court of jurisdiction. Cf. *In re Wayne County Prosecutor*, 192 Mich App 658, 681; 482 NW2d 176 (1991). Because we find that a waiver challenge does not give rise to a jurisdictional question, we find defendant's motion is untimely and that, to seek appellate review, defendant must establish both good cause and actual prejudice resulting from the alleged error. MCR 6.508(D)(3). Defendant has had ample opportunity to raise this issue in the past twenty years and has failed to establish a reasonable likelihood that a jury would have acquitted him if the waiver had not been recognized as valid. In addition, we note that the lower court records show that defendant's voluntarily signed waiver form was "read, approved and signed in open court." Defendant is not entitled to any relief on this issue.

Defendant also argues that he is entitled to reversal of his conviction because there was no valid waiver of juvenile court jurisdiction. Defendant contends that the trial court did not adequately investigate the evidence before granting the waiver. There is no merit to this claim. To support a juvenile waiver, the prosecution must show by a preponderance of the evidence that the best interests of the juvenile and of society would be served by the waiver. MCL 712A.4; MSA 27.3178(598.4); MCR 5.950. A panel of this Court concluded concerning the juvenile waiver in codefendant's trial, *Saxton, supra* at 687, that any error there was harmless in light of the overwhelming evidence justifying the waiver presented at Saxton's trial. In this case, there was ample evidence at defendant's trial of defendant's prior contact with the juvenile court, and of the horrific nature of the present crime. Defendant's own psychiatrist testified that he was not certain that defendant was "even treatable" and that defendant would need long-term treatment within a secure and "tightly controlled" environment. As in *Saxton, Id.*, any error concerning the juvenile procedure here was harmless in light of the evidence presented at defendant's trial supporting the waiver.

Finally, there is no merit to defendant's claim of ineffective assistance of counsel. Defendant alleges that counsel was ineffective in failing to recognize the errors committed by the probate court in waiving jurisdiction and in failing to pursue an appeal on that basis. Even assuming that counsel erred in this regard, defendant is unable to show that the error was prejudicial. A remand would have led, at best, to a correction of the waiver procedure and not to a different result. We find neither a reasonable probability that the result in this case would have been different, nor that the result of the proceeding was fundamentally unfair or unreliable. *People v Pickens*, 446 Mich 298, 302; 521 NW2d 797 (1994); *People v Poole*, 218 Mich App 702, 718; 555 NW2d 485 (1996).

Affirmed.

/s/ Clifford W. Taylor

/s/ Harold Hood

/s/ Roman S. Gribbs

<sup>1</sup> *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602, 1612; 16 L Ed 2d (1966);