

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TYRONE K. WOODS,

Defendant-Appellant.

UNPUBLISHED

May 15, 1998

No. 191138

Recorder's Court

LC No. 94-010636 FC

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANDRE WOODS,

Defendant-Appellant.

UNPUBLISHED

No. 191141

Recorder's Court

LC No. 94-010636 FC

Before: Cavanagh, P.J., and Doctoroff and Saad, JJ.

PER CURIAM.

Both defendants were convicted at a joint jury trial of four counts of first-degree premeditated murder, MCL 750.316; MSA 28.548, one count of assault with intent to murder, MCL 750.83; MSA 28.278, and one count of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant Tyrone Woods was sentenced to life imprisonment without the possibility of parole for each first-degree murder conviction, twenty-five to fifty years' imprisonment for the assault with intent to murder conviction, plus a consecutive two-year prison term for the felony-firearm conviction. Defendant Andre Woods was sentenced to life imprisonment without the possibility of parole for each first-degree murder conviction, twenty to fifty years' imprisonment for the assault with intent to murder conviction, plus a consecutive two-year prison term for the felony-firearm conviction. Both defendants appeal their convictions as of right. We affirm all the convictions.

I

Defendant Andre Woods argues that there was insufficient evidence presented to convict him of first-degree murder, and that there was insufficient evidence presented at his preliminary examination to bind him over for trial on the murder charges. We disagree. There was sufficient evidence to conclude that Andre Woods either killed the victims or aided and abetted Tyrone Woods in the murders, that he intended to kill the victims, and that this killing was deliberate and premeditated. Viewing the evidence in a light most favorable to the prosecutor, a rational jury could have found beyond a reasonable doubt that Andre Woods was guilty of four counts of first-degree premeditated murder. See *People v Jolly*, 407 Mich 354; 502 NW2d 177 (1993); *People v Tilley*, 405 Mich 38, 44-45; 273 NW2d 471 (1979); *People v Youngblood*, 165 Mich App 381, 386-387; 418 NW2d 472 (1988). Because there was sufficient evidence to convict Andre Woods of the murders, any error in binding him over on those charges was harmless. See *People v Meadows*, 175 Mich App 355, 359; 437 NW2d 405 (1989).

Defendant Tyrone Woods also asserts that insufficient evidence was presented to convict him of first-degree murder or assault with intent to murder. We disagree. Viewing the evidence presented below in a light most favorable to the prosecutor, a rational jury could find beyond a reasonable doubt that Tyrone Woods either killed the victims or committed acts which assisted or encouraged Andre Woods in committing the murders, that Tyrone Woods intended to kill the victims, and that the killing was deliberate and premeditated. See *Jolly, supra*; *Tilley, supra*; *Youngblood, supra*. Based on the evidence a rational jury could also have concluded beyond a reasonable doubt that Tyrone Woods possessed the intent to kill required to convict him of assault with intent to murder. See *Jolly, supra*; *People v Rockwell*, 188 Mich App 405, 411; 470 NW2d 673 (1991).

II

Defendant Andre Woods claims that the trial court erred by failing to *sua sponte* instruct the jury regarding the cognate lesser included offense of involuntary manslaughter. No manifest injustice occurred due to this omission, so appellate review of this issue is waived by defendant's failure to request such an instruction. See *People v Johnson*, 187 Mich App 621, 627-628; 468 NW2d 307 (1991).

III

Defendant Andre Woods maintains that the trial court erred by denying his motion for a separate trial. We find no error. Andre Woods' and Tyrone Woods' defenses were neither mutually exclusive nor irreconcilable, so it was not necessary to grant them separate trials. See *People v Hana*, 447 Mich 325, 345-346; 524 NW2d 682 (1994).

IV

Defendant Andre Woods asserts that the trial court denied him a fair trial by conducting the jury voir dire in a manner that prevented his trial counsel from determining that one juror was biased in favor of the police. We disagree. Review of the transcript shows that the trial court did not abuse its

discretion in conducting voir dire. See *People v Tyburski*, 445 Mich 606, 619; 518 NW2d 441 (1994). The record shows that Andre Woods' trial counsel was made aware that the juror's brother was a policeman during voir dire of the jury, yet did not raise the issue of potential bias until after the verdict was delivered. Defendant will not be permitted to let a potential error pass in the trial court, then proceed to seek redress on appeal. See *People v Potra*, 191 Mich App 503, 512; 479 NW2d 707 (1991).

V

Defendant Andre Woods argues that the trial court erred by allowing the prosecutor to cross-examine him regarding prior bad acts. We find no abuse of discretion. Defendant put his character at issue while testifying, so the prosecutor was allowed to question him about his illegal business activities. See *People v Golden*, 121 Mich App 490, 496; 328 NW2d 667 (1982).

VI

Defendant contends that he was denied a fair trial because the prosecutor failed to produce res gestae witnesses, the pathologist who performed the autopsies on the victims, or bullet fragments retrieved from the head of one of the victims. We disagree. A prosecutor's duty with regard to res gestae witnesses is only to list such witnesses known at the time of the filing of the information and those that become known before trial. There is no duty to endorse or produce such witnesses. *People v Paquette*, 214 Mich App 336, 343; 543 NW2d 342 (1995). Furthermore, Andre's trial counsel did not object to the prosecutor's failure to produce the medical examiner who performed the autopsies, nor did he demand production of the bullet fragments despite the fact that their existence was apparent from the reports provided to both defense counsel. Because the absence of this evidence did not prejudice the defense, trial counsel's failure to demand its production waives the issue on appeal. See *People v Jackson*, 178 Mich App 62, 66; 443 NW2d 423 (1989).

VII

Both Andre Woods and Tyrone Woods argue that their respective trial counsel's performance denied them effective assistance of counsel. We disagree. Neither defendant has shown that his trial counsel committed errors so serious that counsel was not functioning as an attorney as guaranteed under the Sixth Amendment, nor has either defendant shown any resulting prejudice to the defense. See *People v Reed*, 453 Mich 685, 694-695; 556 NW2d 858 (1996); *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). Nor has Tyrone Woods shown that an actual conflict of interest adversely affected his trial counsel's performance. See *People v Smith*, 456 Mich 543, 556; ____ NW2d ____ (1998).

VIII

Both defendants assert that their convictions should be reversed because the prosecutor violated the trial court's discovery order when she failed to provide their trial counsel with copies of an eyewitness's statement. Neither defendant has shown that this statement was somehow exculpatory or

that its earlier absence somehow prejudiced his defense. Review of the record shows that when this omission came to light, the trial court directed the prosecutor to provide defense counsel with copies of the statement, and told counsel that they could recall the witness after they had a chance to review his statement. The trial court did not abuse its discretion by dealing with the omission in this manner. See *People v Fink*, 456 Mich 449, 458-459; ___ NW2d ___ (1998); *People v Young*, 212 Mich App 630, 642; 538 NW2d 456 (1995).

IX

Defendant Tyrone Woods argues that the trial court erred by refusing to allow him to proceed to represent himself after he expressed dissatisfaction with his trial counsel. The trial court denied Tyrone Woods' request because it was not satisfied that he had made an intelligent and knowing waiver of his rights. At the next day of trial, Tyrone Woods told the court that he had no problem with his trial counsel's performance and was glad he took the court's advice. The trial court did not abuse its discretion by denying Tyrone Woods' request to represent himself without counsel. See *People v Adkins (After Remand)*, 452 Mich 702, 722-723, 727; 551 NW2d 108 (1996).

X

Defendant Tyrone Woods claims that he must be re-tried because the jury instructions did not specify whether he was being charged as a principal or an aider and abettor. No manifest injustice occurred, so review of this issue is waived by defendant's failure to object to the jury instructions at trial. See *People v Sammons*, 191 Mich App 351, 371-372; 478 NW2d 901 (1991); *Johnson, supra*.

XI

Defendant Tyrone Woods maintains that the prosecutor denied him a fair trial by making improper remarks during trial and in her closing and rebuttal arguments. We disagree. The prosecutor's statements fall within the normal boundaries of advocacy and did not deny Tyrone Woods a fair trial. See *People v Bahoda*, 448 Mich 261, 267, 282; 531 NW2d 659 (1995).

XII

Defendant Tyrone Woods contends that the trial court erred by giving a cautionary instruction regarding bad acts evidence that had been introduced against Andre Woods, but not giving a similar instruction with regard to Tyrone Woods. Since no miscarriage of justice resulted from failure to give this instruction, defendant's failure to object waives this issue on appeal. See *Sammons, supra*; *Johnson, supra*.

XIII

Finally, Tyrone Woods argues that his conviction must be reversed because the prosecutor suppressed evidence of the type of bullet fragments taken from one victim's head, and asserts that the cumulative effect of all errors denied him a fair trial. We disagree with both arguments. The prosecutor

did not suppress the bullet evidence. Both defense counsel were provided copies of the ballistics report, which, according to the trial court, indicated the size of that bullet. Because we have concluded that no errors occurred at trial, we reject the argument that the cumulative effect of the errors requires reversal. Cf. *People v Maleski*, 220 Mich App 518, 525; 560 NW2d 71 (1996).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Martin M. Doctoroff
/s/ Henry William Saad