

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID M. CASTANEDA,

Defendant-Appellant.

UNPUBLISHED

October 28, 2003

No. 241141

Wayne Circuit Court

LC No. 00-010816-01

Before: Whitbeck, C.J., and Jansen and Markey, JJ.

PER CURIAM.

Defendant appeals by right from his jury trial conviction of first-degree murder, MCL 750.316(1)(a), and felony-firearm, MCL 750.227b(1). Defendant was sentenced to mandatory, non-parolable life imprisonment for first-degree murder and to the mandatory consecutive two-year term of imprisonment for felony-firearm. We affirm.

Defendant raises three challenges to the jury instructions, none of which was preserved by objection. When the court asked if the defense had any “objections, additions, or corrections” to the jury instructions as given, defense counsel replied, “[N]o objection, your Honor.” Defendant waived any claim of error by expressing satisfaction with the jury instructions. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000). See also, *People v Lueth*, 253 Mich App 670, 688; 660 NW2d 322 (2002), and *People v Ortiz*, 249 Mich App 297, 311; 642 NW2d 417 (2001).

Defendant next claims that the trial court erred by refusing to permit him to cross-examine and impeach the victim’s brother concerning whether he told the police the victim “had problems” with people in the neighborhood. The decision whether to admit evidence is within the discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998).

In general, it is improper to impeach a witness on a collateral matter. *People v Vasher*, 449 Mich 494, 504; 537 NW2d 168 (1995); *People v Losey*, 413 Mich 346, 353; 320 NW2d 49 (1982). A collateral matter is one that is not material to a fact of consequence in the action. *People v Manser*, 250 Mich App 21, 32; 645 NW2d 65 (2002). Although defendant argued he sought to “impeach” the victim’s brother with a prior inconsistent statement, the trial court did not abuse its discretion by concluding that defendant actually intended to establish that the victim

had problems with people in the neighborhood. But because the victim and defendant did not know each other, and defendant presented an alibi defense, the fact defendant sought to prove was collateral. The trial court has discretion to exclude even relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, undue delay, waste of time, or needless presentation of cumulative evidence. MRE 403. The proposed impeachment was also improper under MRE 608(b) because it did not pertain to the victim's reputation for truthfulness. So the trial court did not abuse its discretion by limiting defendant's cross-examination to relevant, non-collateral matters.

Defendant finally contends that his mandatory life sentence for first-degree murder is unconstitutional because it is an improper determinate sentence, and it constitutes cruel and unusual punishment. Const 1963, art 4, § 45 and art 1, § 16. In *People v Cooper*, 236 Mich App 643, 660-664; 601 NW2d 409 (1999), this Court held that the mandatory two-year determinate sentence for felony-firearm did not violate Const 1963, art 4, § 45 because “[w]hile this constitutional provision plainly authorizes indeterminate sentencing, it includes no *prohibition* against a statute *requiring* determinate sentencing as a punishment for crime.” *Id.* at 661 (emphasis in the original). In *People v Snider*, 239 Mich App 393, 426-428; 608 NW2d 502 (2000), this Court reaffirmed *Cooper* in the context of an identical challenge to a mandatory life sentence for first-degree murder – the same crime of which defendant was convicted and about which he raises this argument.

With regard to the cruel and usual punishment claim, both our Supreme Court and this Court have rejected the claim that a mandatory life sentence without the possibility of parole for first-degree murder is cruel or unusual punishment. *People v Hall*, 396 Mich 650, 657-658; 242 NW2d 377 (1976); *People v Launsburry*, 217 Mich App 358, 363-364; 551 NW2d 460 (1996).

We affirm.

/s/ William C. Whitbeck
/s/ Kathleen Jansen
/s/ Jane E. Markey