

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ABDUALLAH LUKEMAN MADYUN, a/k/a
LUKEMAN A. MADYUN,

Defendant-Appellant.

UNPUBLISHED

June 29, 2004

No. 246016

Wayne Circuit Court

LC No. 02-005411

Before: Smolenski, P.J., and White and Kelly, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of alternative counts of first-degree premeditated murder and first-degree felony murder, MCL 750.316, assault with intent to commit murder, MCL 750.83, and possession of a firearm during the commission of a felony, MCL 750.227b. At sentencing, the court vacated the felony murder conviction and sentenced defendant to concurrent terms of life imprisonment for the first-degree premeditated murder conviction and fifteen to twenty-five years' imprisonment for the assault conviction, to be served consecutive to a two-year term of imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court erroneously denied his motion to suppress his custodial statement. He claims that the statement was involuntary because he was deprived of sleep and had an abdominal wound that was not treated until after he gave the statement. We disagree.

This Court reviews the question of voluntariness independent of the trial court, but we will affirm the trial court's decision unless we are left with a definite and firm conviction that a mistake was made. *People v Sexton (After Remand)*, 461 Mich 746, 752; 609 NW2d 822 (2000).

The evidence disclosed that defendant had been in custody for approximately six hours before the police interview, which lasted approximately 2-1/2 hours. When the police asked defendant if he had any physical problems, he did not mention that he was tired. With respect to defendant's abdominal injury, the interviewing officer described the cut as shallow, and defendant did not mention the injury before the interview or complain that he was in physical pain during the interview. The evidence did not disclose any other circumstances suggesting that defendant's statement was not voluntarily made. Because the totality of the circumstances

indicate that defendant's statement was freely and voluntarily made, the trial court did not err in denying defendant's motion to suppress the statement.

Defendant next argues that there was insufficient evidence of premeditation and deliberation to support his conviction of first-degree murder and, instead, the circumstances surrounding the killing showed that he committed the offense in the heat of passion based on adequate provocation, thus mitigating the crime to manslaughter. We disagree.

When reviewing the sufficiency of the evidence in a criminal case, this Court must view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

First-degree premeditated murder is defined in MCL 750.316(1)(a) as a "willful, deliberate, and premeditated killing." The prosecution must establish "that the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate." *People v Kelly*, 231 Mich App 627, 642; 588 NW2d 480 (1998). Premeditation and deliberation may be inferred from the circumstances surrounding the killing. *Id.*

The evidence showed that defendant drove from North Carolina to his former girlfriend's house in Michigan, left the house at approximately 7:30 or 8:00 p.m., and then returned sometime after midnight armed with a gun and a "taser." During the offense, defendant told the victim, "I hope you die, B----." In his statement to the police, defendant admitted that when he returned to his girlfriend's house, he intended to kill both her and her new boyfriend. Viewed in a light most favorable to the prosecution, the evidence was sufficient to establish premeditation and deliberation beyond a reasonable doubt.

The evidence was also sufficient to enable the jury to reject defendant's argument that the crime should be reduced to manslaughter. A person "who has acted out of a temporary excitement induced by an adequate provocation and not from deliberation and reflection" is properly convicted of voluntary manslaughter. *People v Mendoza*, 468 Mich 527, 535; 664 NW2d 685 (2003), citing *People v Townes*, 391 Mich 578, 590; 218 NW2d 136 (1974). The provocation necessary to reduce a murder to manslaughter "must be adequate, namely, that which would cause the reasonable person to lose control. Not every hot-tempered individual who flies into a rage at the slightest insult can claim manslaughter. The law cannot countenance the loss of self-control; rather, it must encourage people to control their passions." *People v Pouncey*, 437 Mich 382, 389; 471 NW2d 346 (1991) (citation omitted).

The evidence showed that defendant met briefly with the victim and her new boyfriend in the early evening before the offense and then left. He did not return until after midnight and admitted that his intent in returning was to kill the victim and her new boyfriend. He entered the house through a window that he broke with a brick or a rock, following which he shot the victim and her boyfriend, and also injured another occupant of the house. Viewed most favorably to the prosecution, the evidence was sufficient to enable the jury to reject, as it did, defendant's claim that the killing resulted from reasonable provocation as to mitigate the homicide from murder to voluntary manslaughter.

Defendant next argues that he is entitled to a new trial because several letters that defendant wrote to the victim, which the police seized from the victim's home after the offense, were not provided during discovery. Defendant did not preserve this issue by raising it below, nor did defendant file a motion to remand in this Court pursuant to MCR 7.211(C)(1). *People v Malone*, 193 Mich App 366, 371; 483 NW2d 470 (1992), aff'd on other grounds 445 Mich 369 (1994). There is no record support for defendant's contentions that the defense requested discovery of the letters or that the letters were not provided. Nor is there any indication that the letters would have been useful to defendant. The Court's instruction in *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973), is equally applicable here:

If the record made before a defendant is convicted does not factually support claims he wishes to urge on appeal, he should move in the trial court for a new trial or, where the conviction is on a plea of guilty, to set aside the plea, and seek to make a separate record factually supporting the claims. Without record evidence supporting the claims, neither the Court of Appeals nor we have a basis for considering them.

Absent record support for defendant's claim, this unpreserved issue does not warrant appellate relief under the plain error standard. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Defendant next challenges the admission of several photographs. Because defendant did not object to the photographs at trial, we also review this issue for plain error affecting defendant's substantial rights. *Carines, supra*. Our review of the challenged photographs does not disclose plain error. The photographs were probative because they corroborated the testimony of the eyewitnesses concerning their account of defendant's conduct, and it is not apparent that their probative value was substantially outweighed by the danger of unfair prejudice. MRE 403; *People v Mills*, 450 Mich 61, 66-80; 537 NW2d 909 (1995), mod 450 Mich 1212 (1995).

Defendant also argues that the prosecutor improperly argued facts not in evidence when he stated that defendant brought the gun and the taser with him from North Carolina. We disagree.

"Prosecutors may not make a statement of fact to the jury that is unsupported by the evidence, but they are free to argue the evidence and all reasonable inferences arising from it as they relate to the theory of the case." *People v Schutte*, 240 Mich App 713, 721; 613 NW2d 370 (2000). Because defendant did not object to the prosecutor's remarks, we review this issue for plain error affecting defendant's substantial rights. *Id.* at 720; *Carines, supra*.

With regard to the gun, the prosecutor's argument was supported by the evidence because defendant admitted to the police that he had owned the gun for more than half a year, and the evidence also showed that defendant drove to Michigan from North Carolina shortly before the incident. Although the evidence did not disclose when defendant obtained the taser, in light of the evidence that the offense was committed shortly upon defendant's arrival in Michigan, we conclude that the prosecutor's argument that defendant also brought the taser from North Carolina was a reasonable inference based on the evidence.

Defendant also claims that trial counsel was ineffective for failing to object to the admission of the photographs and the prosecutor's closing argument concerning whether defendant brought the gun and taser from North Carolina. Having determined that the photographs were properly admitted and that the prosecutor's argument was proper, it follows that defense counsel was not ineffective for failing to object to these matters.

Defendant argues that he was denied a fair trial because of the cumulative effect of multiple errors. "[O]nly actual errors are aggregated to determine their cumulative effect." *People v Bahoda*, 448 Mich 261, 292 n 64; 531 NW2d 659 (1995). Because defendant has not shown that any actual errors occurred, his claim that he was denied a fair trial because of the cumulative effect of multiple errors must likewise fail.

Finally, defendant challenges the constitutionality of his determine life sentence for first-degree murder and two-year sentence for felony-firearm. Contrary to what defendant argues, the Michigan Constitution does not prohibit the imposition of a determinate sentence for these crimes. *People v Snider*, 239 Mich App 393, 425-429; 608 NW2d 502 (2000); *People v Cooper*, 236 Mich App 643, 660-664; 601 NW2d 409 (1999). In addition, a sentence of life imprisonment without the possibility of parole does not constitute 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).

Affirmed.

/s/ Michael R. Smolenski
/s/ Helene N. White
/s/ Kirsten Frank Kelly