

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSHUA ROGERS,

Defendant-Appellant.

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UNPUBLISHED  
September 13, 2002

No. 232039  
Kent Circuit Court  
LC No. 00-004015-FC

Before: Murphy, P.J., and Hood and Murray, JJ.

PER CURIUM.

Defendant appeals as of right his convictions, following a jury trial, of felony murder, MCL 750.316(1)(b), unarmed robbery, MCL 750.530, car jacking, MCL 750.529a, and kidnapping, MCL 750.349. Defendant was sentenced to life in prison without parole on the murder conviction and concurrent prison terms of 8 to 15 years, 22 ½ to 35 years, and 25 to 40 years, respectively, on the unarmed robbery, car jacking, and kidnapping convictions. Defendant was jointly tried with codefendant Mark Allen Kopp before separate juries.<sup>1</sup> Defendant only challenges the admission of DNA evidence. We affirm.

The evidence at trial indicated that all four codefendants participated in the beating, robbery, and carjacking perpetrated against the victim outside a bowling alley in the city of Grand Rapids. The victim, after being severely beaten, was stuffed into the trunk of his own car, and driven to a remote location in neighboring Mecosta County, where he was repeatedly stabbed with scissors and left to die. Trial testimony also indicated that while the victim was likely beaten into a helpless condition in the bowling alley parking lot, he survived even the stab wounds but died from blunt force injuries to his abdomen and head after several hours without medical attention.

The prosecutor presented evidence that the DNA profile of the victim's blood matched that of blood found in the trunk of the victim's car, on clothes that defendant, Maleski, and Kopp had been wearing, and on other items of evidence. Defendant challenges the trial court's

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<sup>1</sup> Codefendants Chad Maleski and James Rivero were jointly tried in a separate trial that was held simultaneously to defendant's and Kopp's trial.

decision to allow the introduction of the DNA evidence, arguing that the new technique<sup>2</sup> by which it was obtained has not been proven to the level of recognized science as required by MRE 702 and the *Davis-Frye* rule.<sup>3</sup>

We find it unnecessary at this time to address the issue presented by defendant because there was overwhelming evidence, outside of the DNA evidence, establishing defendant's guilt beyond a reasonable doubt, and because defendant acknowledged that he was a participant in the crime. This was not a case that hinged on DNA evidence. Even if the trial court's ruling had been made in error, such error would have been harmless. MCL 769.26; *People v Lukity*, 460 Mich 484, 491-495; 596 NW2d 607 (1999).

Defendant's statements made to the police after the crime were introduced to the jury. Defendant admitted participating in the crime by telling the victim to turn over his property, grabbing the victim by the throat, kicking and punching the victim, placing the victim in the trunk of the victim's car and later removing him from the trunk, stabbing the victim several times with a pair of scissors, leaving the assaulted victim in a remote area, and by wiping the car down to remove blood. Defendant admitted having the victim's blood on his shirt, and police noticed blood on defendant's hat and shoes at the time of his interview.

A pager clip matching defendant's pager was found in the bowling alley parking lot, and a bowling alley employee placed defendant at the scene of the crime. A relative of one of the codefendants testified that on the night of the crime, defendant told her that he and the codefendants had "jacked" the victim, beat him up, and placed his body in the trunk of a car. The witness also testified that defendant and the codefendants burst into her home on the evening of the crime, and defendant had blood on his pants. Defendant gave her a watch that was later identified as belonging to the victim, and defendant was observed arriving at the home in a vehicle matching the victim's vehicle.<sup>4</sup>

A drug dealer testified that he sold drugs to defendant and the codefendants around the time of the crime, and they were driving a white Cadillac. Kopp or Maleski opened the trunk of the car and showed him the body. In a taped statement to the police, the drug dealer stated that defendant had called him and told him that he had stabbed the victim.

In opening statements, defense counsel stated that defendant was at the scene of the crime and participated in the crime. Defense counsel stated that "Mr. Rogers did take part in this senseless, brutal act." Defendant's position at trial was simply that he lacked the specific intent

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<sup>2</sup> Michigan State Police DNA protocol used the method known as PCR STR [an acronym for polymerase chain reaction and short tandem repeat] utilizing the CoFiler and ProFiler kits and the ABI 310 or 377 Genetic Analyzer.

<sup>3</sup> *People v Davis*, 343 Mich 348; 72 NW2d 269 (1955); *Frye v United States*, 54 US App DC 46; 293 F 1013 (1923).

<sup>4</sup> The victim's vehicle was a white Cadillac.

to commit the crimes because he was too high and intoxicated from drug and alcohol use. This defense was rejected by the jury.

In light of the evidence presented at trial and defendant's defense strategy, we fail to see how the DNA evidence had any meaningful significance in relation to the jury's verdict. There was no miscarriage of justice. *Lukity, supra* at 495.

Affirmed.

/s/ William B. Murphy  
/s/ Harold Hood  
/s/ Christopher M. Murray