

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEANDRE DESHON LEGETTE,

Defendant-Appellant.

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UNPUBLISHED

January 4, 2005

No. 250158

Wayne Circuit Court

LC No. 01-013250-01

Before: Cavanagh, P.J., and Jansen and Fort Hood, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of two counts of second-degree murder, MCL 750.317, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to thirty-three to fifty years' imprisonment for the murder convictions, one to five years' imprisonment for the felon in possession conviction, and two years' imprisonment for the felony-firearm conviction. Defendant appeals as of right, and we affirm.

Defendant first alleges that the trial court erred in admitting evidence of a rape that did not involve defendant. We disagree. A trial court's decision to admit evidence is reviewed for an abuse of discretion. *People v Katt*, 468 Mich 272, 278; 662 NW2d 12 (2003). However, an unpreserved claim of evidentiary error is reviewed for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Reversal is only warranted if the error resulted in the conviction of an innocent defendant or the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Id.* Proof of motive in a prosecution for murder is always relevant, even if not essential, and other acts evidence is admissible to prove motive. *People v Rice (On Remand)*, 235 Mich App 429, 440; 597 NW2d 843 (1999).

In the present case, the evidence of rape was admitted to provide a motive for the crime. It was the prosecution's theory that defendant believed that his relative had been sexually assaulted by the first cousin of one of the victims. Additionally, the victim and his first cousin were similar in appearance. Thus, it was alleged that defendant's commission of the crime against this victim was based on mistaken identity. The contention that the probative value of this evidence was outweighed by the danger of unfair prejudice is without merit. Unfair prejudice is presented when there is an indication that the evidence will be given undue or preemptive weight by the jury or when it would be inequitable to allow the use of the evidence.

*People v McGuffey*, 251 Mich App 155, 163; 649 NW2d 801 (2002). This evidence was merely explanatory in nature, and there was no indication that it would be given undue weight, particularly in light of defendant's admission to the crime. Moreover, the evidence was not hearsay because it was not offered to prove the veracity of the rape allegations, but merely offered to provide the motive for the crimes. See MRE 801(c). Accordingly, there was no plain error affecting defendant's substantial rights.

Defendant next alleges that he was denied the right to a fair trial when a prospective juror made prejudicial comments that tainted the entire jury panel. We disagree. An expression of satisfaction with a jury at the close of voir dire waives the party's ability to challenge the manner in which voir dire was conducted. *People v Hubbard (After Remand)*, 217 Mich App 459, 466; 552 NW2d 493 (1996). Thus, based on defense counsel's failure to object to any alleged taint to the remaining panel and his expression of satisfaction with the jury, appellate review of this issue is waived.

In any event, we conclude that the questioning of the prospective juror did not taint the remaining panel members. A trial court is given broad discretion in its examination of a juror during voir dire, and a question of juror impartiality may only be reversed if it presents a clear abuse of discretion. *Butler v DAIEE*, 121 Mich App 727, 746; 329 NW2d 781 (1982). We defer to the trial court's ability to assess a juror's demeanor and the question of juror partiality. *Id.* In the present case, a potential juror was excused due to the inability to set aside preconceived notions regarding a defendant's right to remain silent. When the prospective juror at issue also questioned the exercise of this right, the trial court thoroughly questioned this juror, and the juror indicated that she could remain on the panel. There is no indication that this questioning tainted the entire panel.

Defendant next alleges that he was deprived of due process of law when irrelevant and unfair evidence, specifically, defendant's status as a convicted felon was submitted to the jury. On the contrary, this evidence was relevant because defendant was charged with felon in possession of a firearm, contrary to MCL 750.224f. Moreover, to ensure that the information presented to the jury was limited, the parties stipulated to defendant's status as a felon. Further, the trial court instructed the jury that it must give separate consideration to each offense. These safeguards are adequate protection from unfair prejudice when a single trial for both felon in possession and other charges occurs. See *People v Green*, 228 Mich App 684, 691-692; 580 NW2d 444 (1998).

Defendant next alleges that he was deprived of his right to effective assistance of counsel where counsel stipulated to the introduction of the prior felony conviction, tainted the jury by questioning panel members, and failed to object to the admission of evidence. We disagree. In reviewing a claim of ineffective assistance of counsel, a trial court's findings of fact are reviewed for clear error, while questions of constitutional law are reviewed de novo. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). A defendant seeking a new trial on the ground that trial counsel was ineffective bears a heavy burden of proving otherwise. *People v Solmonson*, 261 Mich App 657, 663; 683 NW2d 761 (2004). To justify reversal, the defendant must show that counsel's performance was deficient, and that the deficient performance was prejudicial. *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001). In so doing, the defendant must overcome a strong presumption that counsel's performance constituted sound trial strategy. *Id.*

Following review of the record, defendant failed to meet his burden of demonstrating ineffective assistance. The evidence regarding the rape of defendant's relatives was properly admitted as evidence of motive, and counsel will not be deemed ineffective for failing to advocate a meritless position. *People v Riley*, 468 Mich 135, 142; 659 NW2d 611 (2003). Additionally, the stipulation regarding the admission of the felony status, and the questioning of the jurors regarding partiality was sound trial strategy. *Id.* at 140.

Lastly, defendant alleges that the trial court erred by admitting evidence of prior bad acts. Specifically, defendant objects to the testimony of a witness regarding threats, defendant's involvement with drug organizations, defendant's apprehension at a drug house, and defendant's possession of a gun. Defendant did not object to the admission of this evidence, resulting in review for plain error affecting defendant's substantial rights. *Carines, supra*. We cannot conclude that plain error affecting defendant's substantial rights occurred, particularly in light of defendant's confession to the shooting.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Kathleen Jansen  
/s/ Karen M. Fort Hood