

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFREY MUEHLHAUSEN,

Defendant-Appellant.

UNPUBLISHED

March 7, 1997

No. 183925

Kent Circuit Court

LC No. 93-062743-FH

Before: Reilly, P.J., and MacKenzie and B.K. Zahra*, JJ.

PER CURIAM.

Defendant was convicted by a jury of second-degree murder, MCL 750.317; MSA 28.549, for killing his girlfriend's two-year-old son. He was sentenced to fifteen to thirty years' imprisonment, and now appeals of right. We affirm.

Defendant first claims that he was denied a fair trial due to several instances of prosecutorial misconduct. A number of the alleged errors were not objected to at trial, and we decline to consider them on appeal. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). For the instances where there were defense objections, we find that either there was no error or the error did not deny defendant a fair and impartial trial. *People v McElhaney*, 215 Mich App 269, 283; 545 NW2d 18 (1996).

At trial, defendant did not deny causing the victim's death, but claimed that he lacked criminal responsibility because he was involuntarily intoxicated due to inhalation of fumes during his work as a painter. He now contends that prejudicial error occurred when David Boersma, a forensic clinical psychologist who participated in defendant's court-ordered evaluation to determine mental responsibility, testified regarding the law of criminal insanity and involuntary intoxication. Although we agree that portions of Boersma's testimony were improper, we find no error necessitating reversal.

* Circuit judge, sitting on the Court of Appeals by assignment.

During questioning by the prosecutor, Boersma testified without objection regarding the law of criminal insanity. Later, during examination by the court, he commented, again without objection, regarding his understanding of the law of insanity as it applies to voluntary and involuntary intoxication. This testimony was improper. Although an expert witness may testify that, in his or her opinion, a defendant was mentally ill or insane, the witness may not provide legal definitions of what constitutes insanity. *People v Caulley*, 197 Mich App 177, 193-194; 494 NW2d 853 (1992); *People v Anderson*, 166 Mich App 455, 464; 421 NW2d 200 (1988). Nevertheless, the error does not require reversal because not only did defendant fail to object and thus afford the trial court an opportunity to correct the error, but more importantly the court gave an extensive jury instruction regarding involuntary intoxication that defendant concedes was accurate.

Defendant next argues that the prosecutor failed to prove beyond a reasonable doubt that he was sane at the time of the crime. We disagree. In so holding, we note that although MCL 768.21a(3); MSA 28.1044(1)(3) places the burden of proving an insanity defense upon the defendant, the prosecutor assumed that burden to avoid possible legal problems regarding retroactive application of the statute.

When reviewing a challenge to the sufficiency of the evidence, this Court views the evidence in a light most favorable to the prosecutor and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Even disregarding David Boersma's erroneous testimony, ample evidence exists to support the jury's verdict. The prosecution's toxicology expert controverted the defense expert's testimony that defendant was chemically poisoned at the time of the crime. Defendant's live-in girlfriend testified that she never observed any intoxicated behavior by him. Furthermore, the police detective who interviewed defendant after the crime stated that defendant never mentioned having experienced a blackout. From the evidence presented, a rational jury could find that the essential elements of second-degree murder were proven beyond a reasonable doubt.

Finally, defendant contends that the trial court erred by denying his motion to exclude evidence that he had abused the victim more than three days before the death occurred. This evidence was probative of malice and showed the absence of mistake or accident. The court properly allowed its introduction in the prosecution's case-in-chief. MRE 404(b), *People v VanderVliet*, 444 Mich 52; 508 NW2d 114 (1993); *People v Biggs*, 202 Mich App 450, 451-453; 509 NW2d 803 (1993).

Affirmed.

/s/ Maureen Pulte Reilly
/s/ Barbara B. MacKenzie
/s/ Brian K. Zahra