

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL DAVID ELLIOT,

Defendant-Appellant.

UNPUBLISHED

March 18, 1997

No. 174954

Gladwin Circuit Court

LC No. 93-005282-FC

Before: Cavanagh, P.J., and Reilly, and C.D. Corwin,* JJ.

PER CURIAM.

Defendant was found guilty by a jury of four counts of first-degree murder, MCL 750.316; MSA 28.548, and one count each of armed robbery, MCL 750.529; MSA 28.797, entry without breaking with intent to commit a larceny, MCL 750.111; MSA 28.306, arson of a dwelling house, MCL 750.72; MSA 28.267, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to life imprisonment without parole for each of the murder convictions, life imprisonment with the possibility of parole for the armed robbery conviction, thirteen to twenty years' imprisonment for the arson conviction, three to five years' imprisonment for the entry without breaking conviction, and two years' consecutive imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant was not denied a fair trial for any of the reasons claimed on appeal. The trial court did not pierce the veil of impartiality and its questioning of a prosecution witness did not deprive defendant of a fair trial. *People v Sowders*, 164 Mich App 36, 49; 417 NW2d 78 (1987); *People v Davis*, 216 Mich App 47, 50; 549 NW2d 1 (1996). The court did not abuse its discretion in admitting the complained of exhibits. *People v Mills*, 450 Mich 61; 537 NW2d 909 (1995). Nor did the court abuse its discretion in denying defendant's pre-trial motion for change of venue. *People v DeLisle*, 202 Mich App 658; 509 NW2d 885 (1993).

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

Defendant's failure to object to the jury instructions regarding unanimity waives appellate review absent manifest injustice. *People v Cross*, 202 Mich App 138, 148; 508 NW2d 144 (1993). We are not persuaded that manifest injustice will result and decline to further address the issue. The trial court did not abuse its discretion in refusing to instruct the jury on an intoxication defense because the evidence did not support that instruction. *People v Coddington*, 188 Mich App 584, 603, 604; NW2d 478 (1992).

As for defendant's challenge to the sufficiency of the evidence to support the felony murder convictions, we note that the jury indicated that it found defendant guilty of four counts of both felony murder and premeditated murder. At sentencing, the court vacated the felony murder convictions. Therefore, whether there was sufficient evidence to support the felony murder convictions is moot.

The court did not err in denying defendant's motion to suppress evidence. *People v Jordan*, 187 Mich App 582, 587; 468 NW2d 294 (1991). The court neither clearly erred with respect to its findings of fact nor abused its discretion in deciding that hearsay statements attributable to Chuck Treece were admissible as statements against penal interest. MRE 803(b)(3); *People v Barrera*, 451 Mich 261, 268-269; 547 NW2d 280 (1996); *People v Poole*, 444 Mich 151; 506 NW2d 505 (1993). Finally, having rejected defendant's individual claims of error, we likewise reject his claim that the cumulative effect of the alleged errors denied him a fair trial.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Maureen Pulte Reilly
/s/ Charles D. Corwin