STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NELSON OSCAR BOLZMAN,

Defendant-Appellant.

UNPUBLISHED
April 15, 1997

No. 186032
Alcona Circuit Court
LC No. 94-8961-FC

Before: Young, P.J., and Markey and D.A. Teeple,* JJ.

PER CURIAM.

Defendant appeals by right his jury trial conviction of second-degree murder, MCL 750.317; MSA 28.549. The court sentenced defendant to a term of imprisonment of eighteen to thirty years. We affirm.

Defendant, his wife Eileen Bolzman, and others traveled to Curtisville, Michigan in July 1994 for a canoe trip. On the evening of their arrival, witnesses last saw defendant and his wife arguing in defendant's pickup truck, which was parked outside a friend's home. The next morning, a passerby found Eileen Bolzman's body in the road approximately one block from the home. She had been beaten and strangled. A shirt defendant had been wearing was wrapped around her head. A police officer found defendant sleeping in his truck, which was parked approximately 100 yards from the body.

Defendant first argues that the trial court erred in admitting evidence that defendant had cut Dawn Duvall, the decedent's daughter, with a knife during an argument between defendant and the decedent within three years of her murder. Defendant claims that the trial court originally had ruled in limine that this evidence was inadmissible and contends that it should have been excluded pursuant to MRE 404(b) and *People v VanderVliet*, 444 Mich 52; 508 NW2d 114 (1993). We disagree. Contrary to defendant's assertions, the trial court actually had ruled that, while any attacks on Duvall by defendant were inadmissible, any assaults by defendant against the decedent were admissible. That

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

defendant cut Duvall while he assaulted the decedent does not appear to have been excluded by the court's initial ruling.

Further, any error in the admission of the evidence was harmless. First, the prosecutor was unaware of this incident until Duvall mentioned it in her testimony. Second, defense counsel cross-examined Duvall. Thus, the error was not so offensive to the maintenance of a sound judicial process that it can never be regarded as harmless. *People v Robinson*, 386 Mich 551, 563; 194 NW2d 709 (1972); *People v Furman*, 158 Mich App 302, 317; 404 NW2d 246 (1987). Third, witnesses testified that defendant repeatedly had threatened the decedent within hours of the murder and had attacked and choked her in the past. Further, defendant had worn the shirt on the night of the murder that police later found wrapped around the decedent's head. Testimony suggested that defendant knew the location of the body before police gave him that information. With ample circumstantial evidence pointing to defendant's guilt, we conclude that Duvall's testimony regarding defendant's attack had no effect on the verdict. Thus, its admission was harmless beyond a reasonable doubt. *Robinson, supra*, 386 Mich at 563; *People v Morton*, 213 Mich App 331, 335; 539 NW2d 771 (1995); *Furman, supra*, 158 Mich App at 317.

Defendant next argues that the trial court erroneously excluded evidence of prior murders in which J.R. Duvall, the father of the decedent's children, was a suspect, and evidence that the decedent had testified before a grand jury regarding his possible involvement in those murders. We disagree. Defense counsel's offer of proof does not even show that a previous murder occurred. Consequently, any evidence of J.R. Duvall's possible involvement in other unestablished murders would have raised only a mere suspicion of his potential involvement in this case. Evidence that only raises a mere suspicion that someone other than defendant committed the crime is too remote to be probative. *People v Kent*, 157 Mich App 780, 793; 404 NW2d 668 (1987). Therefore, the trial court did not abuse its discretion in ruling that the evidence was inadmissible. Defendant also argues that the trial court inappropriately determined that even if J.R. Duvall had been convicted of the murders, evidence of those murders would be inadmissible. The trial court, however, correctly determined that the evidence was inadmissible because it only raised a mere suspicion that J.R. Duvall may have committed the instant crime. Even if the trial court's stated rationale was erroneous, this Court will not disturb its ruling when it reached the correct result. *People v Brake*, 208 Mich App 233, 242 n 2; 527 NW2d 56 (1994).

Defendant also argues that the trial court erred in excluding evidence that after this incident, the decomposed body of another female was found within one-half mile of the scene of the decedent's murder. Where, as here, no facts suggest that someone else committed another possible murder, this evidence would raise only a mere suspicion that some other person had committed the instant crime. The trial court did not abuse its discretion in excluding this evidence. *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995); *Kent, supra*, 187 Mich App at 793.

Defendant further argues that the trial court erred in excluding, on the basis of hearsay, Dawn Duvall's testimony that J.R. Duvall was involved in a custody dispute with the decedent. We disagree. Dawn Duvall's testimony regarding an alleged dispute between the decedent and J.R. Duvall, based on

her overhearing an argument, necessarily relies on the truth of the statements. The parties had no opportunity through cross-examination to test the veracity of those underlying statements and any assumptions they might support. Thus, under the hearsay rule, this evidence was inadmissible hearsay. *People v Malone*, 445 Mich 369, 375; 518 NW2d 418 (1994); *People v Canter*, 197 Mich App 550, 562; 496 NW2d 336 (1992). Furthermore, because J.R. Duvall testified, defendant could have elicited this information directly from him. Thus, the trial court did not abuse its discretion in excluding Dawn Duvall's testimony regarding the alleged custody dispute between J.R. Duvall and the decedent. *Coleman, supra,* 210 Mich App at 4.

Finally, defendant argues that prosecutorial misconduct precluded him from receiving a fair trial. We disagree. Defendant argues that the prosecutor improperly expressed his personal belief in defendant's guilt during voir dire, and that the prosecutor inappropriately expressed in closing argument a special knowledge of the facts and of a prosecution witness' truthfulness and memory. Defendant failed to object to the alleged misconduct and any potential error could have been cured with an instruction. Accordingly, reversal on this basis is precluded. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). Furthermore, the prosecutor appropriately related the facts to his theory of the case. *People v Jansson*, 116 Mich App 674, 693; 323 NW2d 508 (1982).

Finally, defendant objected to the prosecutor's statement at the closing of the testimony of defendant's cellmate, Tyrone Agar. We decline defendant's invitation to interpret the prosecutor's statement as an expression of his belief in Agar's veracity. Read in context, we do not believe that this statement conveyed a message to the jury that the prosecution had some special knowledge indicating the witness' truthfulness. *People v Bahoda*, 448 Mich 261, 276-277; 531 NW2d 659 (1995).

Affirmed.

/s/ Robert P. Young, Jr.
/s/ Jane E. Markey
/s/ Donald A. Teeple