

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD C. GREER,

Defendant-Appellant.

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UNPUBLISHED

June 13, 1997

No. 148473

Oakland Circuit Court

LC No. 90-099981-FC

Before: Saad, P.J., and Griffin and M.H. Cherry,\* JJ.

PER CURIAM.

A jury convicted defendant of first-degree murder, MCL 750.316; MSA 28.548, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He appeals and we affirm.

I

There was no dispute at trial that defendant shot and killed his friend; the key issue was defendant's mental state. Defendant contends that he was denied a fair trial, due to prosecutorial misconduct. Specifically, defendant contends that the prosecutor: (1) unfairly attacked and denigrated the integrity of defendant's expert psychiatric witness, Dr. Tanay, both in cross-examination and in argument to the jury, (2) improperly displayed certain evidence before the jury, and (3) caused a shift in the burden of proof as a result of his closing argument. Importantly, there was no objection on the basis of prosecutorial misconduct, to these issues at trial.

The prosecutor's questions did suggest that Dr. Tanay testified that defendant was insane because he was paid to do so. However, because there was evidence that Dr. Tanay was indeed paid for his testimony, we see no error. See *People v Chatfield*, 170 Mich App 831, 834-835; 428 NW2d 788 (1988); *People v Reggie Williams*, 162 Mich App 542, 548-549; 430 NW2d 867 (1987).

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

Defendant further contends that the prosecutor improperly impeached Dr. Tanay with questions regarding his conduct as an expert in two unrelated cases where, due to fee disputes, he refused to provide expert testimony. We disagree. MRE 611(b) provides that a "witness may be cross-examined on any matter relevant to any issue in the case, including credibility." Additionally, "a witness's bias or prejudice may be shown by extrinsic evidence, since 'particular conduct and circumstances form the only means practically available for effectively demonstrating the existence of bias.'" *People v Perkins*, 116 Mich App 624, 628; 323 NW2d 311 (1982), quoting 3A Wigmore, Evidence (Chadbourn Rev), §948, p 784. The trial court possesses broad discretion concerning the extent to which a witness may be cross-examined on questions affecting a witness' credibility. *People v Ross*, 145 Mich App 483, 490; 378 NW2d 517 (1985); see *Murphy v Muskegon Co*, 162 Mich App 609, 619; 413 NW2d 73 (1987).

We find no abuse of discretion in the trial court's ruling admitting this line of questioning. The prosecutor is clearly permitted to expose a defense witness's bias or prejudice through evidence that the witness is compensated for testifying on defendant's behalf. MRE 611(b); *Chatfield, supra* at 834-835; *Williams, supra* at 548-549; see *Hunt v Freeman*, 217 Mich App 92, 98; 550 NW2d 817 (1996). Accordingly, the trial court did not clearly abuse its discretion in allowing the prosecutor to cross-examine defendant's expert witness with evidence that he refused to testify in cases where he thought he received insufficient remuneration. *Perkins, supra* at 628.

Further, even assuming arguendo that the prosecutor's comments were improper, we conclude after a thorough review that there is no "reasonable probability that the error affected the outcome of the trial." *People v Hubbard*, 209 Mich App 234, 243; 530 NW2d 130 (1995), quoting *People v Hall*, 435 Mich 599, 609, n 8; 460 NW2d 520 (1990); see also MCR 2.613; MCL 769.26; MSA 28.1096; *People v Mosko*, 441 Mich 496, 502-503; 495 NW2d 534 (1992).

Defendant also asserts that the prosecutor denied him a fair trial by his inflammatory handling of the physical evidence, his appeals for sympathy for the deceased and his family, and his attempt to shift the burden of proof in closing argument. Again, no objection to any of this conduct was made at trial, and following our careful of the record, we see no reversible error. Even considered cumulatively, defendant was not denied a fair and impartial trial as a result of the prosecutor's conduct. See *People v Guenther*, 188 Mich App 174, 181; 469 NW2d 59 (1991).

## II

Defendant next claims that he was denied effective assistance of counsel, because his trial counsel failed to present his treating doctors to substantiate his psychosis or to present the partial defense of diminished capacity. We have reviewed the entire record, including the transcript of the *Ginther* hearing, and we conclude that the trial court did not err in finding that counsel's decision not to call additional witnesses was a matter of trial strategy which was made after thorough investigation. We will not now second-guess counsel's trial strategy and conclude that defendant was denied effective assistance of counsel merely because the strategy backfired. *People v Barnett*, 163 Mich App 331, 338; 414 NW2d 378 (1987).

### III

Defendant next contends that the cumulative errors of the prosecutor and defense counsel denied him a fair trial. We disagree; our review of the record leads us to conclude that defendant received a fair trial. See *People v Kvam*, 160 Mich App 189, 201; 408 NW2d 71 (1987).

### IV

Defendant finally asserts that he is entitled to a new trial based upon newly discovered evidence – the fact that without his anti-psychotic medication, his chronic psychosis reemerges. Again, we disagree. Evidence that defendant is psychotic without his medication is cumulative to other evidence presented at trial. (At trial, Dr. Tanay testified that not taking the drug Navene would result in the reemergence of psychotic symptoms, and his counsel argued this point). Therefore, no retrial or remand is warranted.

Affirmed.

/s/ Henry William Saad

/s/ Richard Allen Griffin