

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DERRICK HUDSON,

Defendant-Appellant.

UNPUBLISHED

February 17, 1998

No. 197603

Recorder's Court

LC No. 95-012264

Before: Michael J. Kelly, P.J., and Fitzgerald and M.G. Harrison*, JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted of first-degree murder, MCL 750.316; MSA 28.548, felony-firearm, MCL 750.227b; MSA 28.424(2). On this appeal of right, he contends that the trial court erred in admitting the testimony of the victim's aunt and legal guardian as to a statement the victim made shortly before his death, identifying defendant as the perpetrator of the homicide. We affirm.

Outside the presence of the jury, defendant objected to allowing this witness to testify, based on the fact that she had not been sequestered during the trial. After noting that there had been no motion to sequester witnesses, and that the witness was not even known to the prosecution until the midst of trial, that objection was overruled. There was no objection on the grounds now advanced when the witness testified the following day before the jury. This issue is accordingly not preserved unless failure to review the claimed error would result in manifest injustice. *People v Burgess*, 153 Mich App 715; 396 NW2d 814 (1986).

The evidence in question was cumulative. Two police officers testified to an earlier statement the decedent made, identifying defendant as his assailant, and there were also numerous eyewitnesses who identified defendant as the perpetrator of this crime. Accordingly, the challenged evidence was cumulative and could not have prejudiced defendant's right to a fair trial.

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

People v Roberson, 90 Mich App 196; 282 NW2d 280 (1979). Without prejudice, there could, of course, be no manifest injustice.

Affirmed.

/s/ Michael J. Kelly

/s/ E. Thomas Fitzgerald

/s/ Michael G. Harrison