STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GREGORY VINCENT YOUNG,

Defendant-Appellant.

UNPUBLISHED
June 2, 1998

No. 197535
Oakland Circuit Court
LC No. 95-140622 FC

Before: Gribbs, P.J., and McDonald and Talbot, JJ.

PER CURIAM.

Defendant was convicted by a jury trial of first-degree premeditated murder, MCL 750.316; MSA 28.548, and was sentenced to life imprisonment without the possibility of parole. He appeals as of right. We affirm.

Defendant first argues that there was insufficient evidence to convict him of first-degree murder. We disagree. When reviewing the sufficiency of the evidence in a criminal case, this Court must view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992).

Conviction of first-degree murder requires a showing that the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate. *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995). Premeditation and deliberation require sufficient time to "take a second look" and may be inferred from the circumstances surrounding the killing. *Id*. Premeditation may be established through evidence of the following factors: (1) The prior relationship of the parties, (2) the defendant's actions before the killing, (3) the circumstances of the killing itself, and (4) the defendant's conduct after the homicide. *Id*. Our review of the record reveals ample evidence showing that defendant killed his estranged wife Loretta Young, that he intended to kill Mrs. Young, and that this killing was deliberate and premeditated. Defendant had expressed anger at being thrown out of the house by Mrs. Young, and told a former coworker that his wife "had gone too far." The day before the murder defendant left a "farewell" message on a woman friend's voice mail which said "in case I never see you again, God Bless." On the night of the murder defendant repeatedly asked the man he was staying with whether he had any guns or wire which could be used to strangle someone. Defendant also repeatedly demanded that his host drive him to Auburn

Hills because he had "something big to do." A few hours later Mrs. Young was stabbed to death in her Auburn Hills home. The next day police found defendant in Pontiac, a short drive from the victim's home. There were spots of blood on defendant's shirt and blood on the soles of his shoes. DNA testing showed to a reasonable scientific certainty that the blood found on defendant's shirt and shoes was Mrs. Young's. Comparison between defendant's shoes and a bloody footprint found at the crime scene showed that defendant's shoe could have left that print. Viewing the evidence in a light most favorable to the prosecutor, a rational jury could have found beyond a reasonable doubt that defendant was guilty of first-degree murder.

Defendant next argues that the trial court erred by allowing Sheriff's Deputy John Jacobs to testify as an expert regarding blood spatters found at the crime scene and similarities between defendant's shoes and the partial bloody footprint. We disagree. The determination of a witness' expert qualifications is within the discretion of the trial court and will not be overturned on appeal unless it can be shown that the court abused its discretion. *People v Gambrell*, 429 Mich 401, 407; 415 NW2d 202 (1987).

A witness may be qualified as an expert based upon his knowledge, skill, experience, training, or education. See MRE 702. Expert qualification is not dependent upon education alone, but may be based upon practical experience in a given field. *Mullholland v DEC Int'l Corp*, 432 Mich 395, 402-407; 443 NW2d 340 (1989). Limitations in a witness's expertise are relevant to the weight of the witness's testimony rather than its admissibility. *Gambrell*, *supra* at 408. Here, Jacob's testimony established his expertise in both footprint analysis and bloodstain pattern analysis. Jacobs, a crime lab specialist, had completed an eighty-hour evidence technician training course, two forty-hour courses in bloodstain pattern analysis, and numerous shorter seminars in blood spatter identification. Jacobs had also participated in hundreds of death investigations and approximately fifty homicide investigations. Accordingly, the trial court did not abuse its discretion by admitting Deputy Jacobs' limited expert testimony.

Next, defendant argues that the trial court erred by allowing the prosecutor to "misuse" evidence of defendant's drug use as a means of convincing the jury that the defendant was possessed of a bad character. We disagree. When reviewing instances of alleged prosecutorial misconduct, this Court must examine the pertinent portion of the record and evaluate the prosecutor's remarks in context. *People v McElhaney*, 215 Mich App 269, 283; 545 NW2d 18 (1996). The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. *Id.* If the defendant fails to object to the challenged remarks below, appellate review is precluded unless a curative instruction could not have removed any prejudicial effect or failure to consider the issue would result in a miscarriage of justice. *People v Nantelle*, 215 Mich App 77, 86-87; 544 NW2d 667 (1996). Here, although defendant did not specifically object to the prosecutor's remarks regarding defendant's prior use of cocaine, he did object to prosecutor's remarks suggesting that defendant had been "hanging out" in crack houses and prostitutes' houses during the weeks leading up to the murder. Based on our review of the record, we conclude that the challenged remarks were (1) supported by the evidence presented (without objection) at trial, (2) made in direct rebuttal to defense counsel's closing arguments, and (3) made for a permissible purpose other than showing defendant's "bad" character. Accordingly, defendant was not denied a fair and impartial trial as a result of the remarks.

Defendant also argues that the prosecution improperly engaged in, and capitalized on, a selective investigation designed to mislead the jury. In addition to the DNA material on defendant's shoes that matched the victim's DNA, the police also found DNA material on defendant's shoes that came from some unknown source other than defendant or the victim. At trial, defense counsel argued in his closing argument that the existence of a third party's DNA mixed with the victim's DNA cast doubt on the prosecution's theory that defendant killed the victim. On appeal, defendant now contends that the prosecution somehow capitalized on the police's failure to investigate the unknown source of blood. When a defendant attempts to use an alleged error to his advantage at trial, this Court will not allow him to use the same error as grounds for reversal on appeal. *People v Baines*, 68 Mich App 385, 388-389; 242 NW2d 784 (1976). Accordingly, defendant is not entitled to relief on this issue.

Defendant further argues that the trial court erred in admitting as evidence a videotape that had been edited by the prosecution and that the prosecution's presentation of this evidence constituted prosecutorial misconduct. We disagree. Because (1) defendant was given an opportunity to play the unedited tape for the jury, but declined to do so, and (2) the jury was provided with an unedited version of the tape to consider as evidence during their deliberations, there was no error of either sort. Defendant may not assign error on appeal to a condition his own counsel accepted at trial. See *People v Barclay*, 208 Mich App 670, 673; 528 NW2d 842 (1995). To do so would allow defendant to harbor error as an appellate parachute. *People v Roberson*, 167 Mich App 501, 516-517; 423 NW2d 245 (1988).

Defendant also complains the prosecutor committed misconduct through misleading statements made in his closing argument. These remarks were not objected to, and our review of the record reveals that the prosecutor's remarks were proper commentary on the evidence presented. Accordingly, defendant is not entitled to relief on this issue. See *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995).

Defendant next argues that his conviction must be reversed because physical evidence and statements he made to police were obtained as a result of an unconstitutional arrest. We disagree. Defendant's arrest was not unconstitutional. Our review of the record shows that defendant was subjected to a brief stop-and-frisk for weapons, then released. This initial stop was proper, and did not amount to an arrest. See *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968); *People v Champion*, 452 Mich 92, 98-99; 549 NW2d 849 (1996). Following this *Terry* stop, defendant agreed to answer some questions, and voluntarily accompanied detectives to the Oakland County Sheriff's Department for questioning. Defendant was not placed under arrest until the end of that interview. At the time of his arrest, defendant's statements during the interview, witness statements, and the presence of blood on defendant's clothes gave the police probable cause to arrest him. See *People v Arterberry*, 431 Mich 381, 384; 429 NW2d 574 (1988); *People v Thomas*, 191 Mich App 576, 579; 478 NW2d 712 (1991).

Defendant argues that his statements to police should have been suppressed because he was never informed of his rights as required by *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966). We disagree. The totality of the circumstances shows that defendant was not in custody during his interrogation, so *Miranda* warnings were not required. See *People v Mendez*, 225

Mich App 381, 382-383; 571 NW2d 528 (1997); *People v McElhaney*, 215 Mich App 269, 278-279; 545 NW2d 18 (1996).

Defendant argues that admission of his statements to police violated constitutional guarantees of due process of law because those statements were the product of police coercion. We disagree. Although this issue was never raised below, the totality of the circumstances shows that defendant's responses were completely voluntary. See *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988).

Defendant also argues that he was denied due process when the trial court refused to consider his post-trial motions. We find no denial of due process. Defendant does not argue that he was entitled to the relief sought in his motions, but rather that he was denied an adequate hearing. Our review indicates that the trial court considered defendant's last-minute motions before sentencing, then denied them. Defendant also argues that the prosecutor failed to produce Deon Coleman as a witness despite defense counsel's request that he do so. The record does not indicate that defendant's trial counsel ever demanded Coleman's production, nor has defendant demonstrated any prejudice due to the failure to call Coleman as a witness. Accordingly, this issue is waived. See *People v Grant*, 445 Mich 535; 520 NW2d 123 (1994); *People v Jackson*, 178 Mich App 62, 66; 443 NW2d 423 (1989).

Finally, defendant argues in a supplemental brief filed in propria persona that his trial counsel's performance denied him effective assistance of counsel. We disagree. Defendant has not shown that his trial counsel committed errors so serious that counsel was not functioning as an attorney as guaranteed under the Sixth Amendment, nor has defendant shown any resulting prejudice to the defense. See *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994).

Affirmed.

/s/ Roman S. Gribbs
/s/ Gary R. McDonald
/s/ Michael J. Talbot