STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DENNIS GRAYSON,

Defendant-Appellant.

UNPUBLISHED
July 10, 1998

No. 200968
Genesee Circuit Court
LC No. 96-054427 FC

Before: MacKenzie, P.J., and Whitbeck and G.S. Allen, Jr.*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm during the commission of a felony, MCL 750.227b(1); MSA 28.424(2)(1). Subsequently, he was convicted of being an habitual offender, second offense, MCL 769.10; MSA 28.1082. He was sentenced to thirty to fifty years' imprisonment for the second-degree murder conviction and two years' imprisonment for the felony-firearm conviction. He now appeals as of right. We affirm.

Defendant first argues that the trial court erred in denying his motion for directed verdict because there was insufficient evidence of premeditation and deliberation to submit the charge of first degree murder to the jury. We disagree. To prove first-degree murder, the prosecution must establish that defendant intentionally killed the victim and that defendant acted with premeditation and deliberation. *People v Haywood*, 209 Mich App 217, 229; 530 NW2d 497 (1995). Premeditation and deliberation may be inferred from all the facts and circumstances surrounding the killing. *Id*. The factors which may be considered include the parties' prior relationship, the defendant's actions before and after the crime, and the circumstances of the killing, including the weapon used and the location of the wounds. *Id*.; *People v Thomas Berry (On Remand)*, 198 Mich App 123, 128; 497 NW2d 202 (1993).

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

Viewing the evidence in a light most favorable to the prosecution, we conclude that there was sufficient evidence of premeditation and deliberation to submit the first-degree murder charge

to the jury. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). The victim's sister, Twila Price, testified that defendant and the victim had a two-month relationship, which ended during the month prior to her sister's death, and that defendant had slapped her sister on one occasion. She also stated that defendant stalked the victim for about two weeks after the relationship ended. Angela Sanders, another former girlfriend of defendant, testified that about two weeks prior to the shooting, defendant had threatened to "shoot the victim's face off" the next time he saw the victim because he believed she had stolen from him. Keith Brown, a witness to the shooting, stated that he observed a car similar to defendant's waiting near the intersection of Moore and Saginaw Streets. He testified that he heard three shots and that the third shot was fired as the victim was falling. The slugs retrieved from the victim's body were matched to the gun found in defendant's apartment, which several people, including defendant, testified belonged to him. Therefore, the trial court did not err in submitting the charge to the jury.

Next, defendant argues that the prosecutor committed misconduct by eliciting testimony from Sanders about her relationship with defendant, including his abusive behavior toward her, and testimony from Price about the victim's relationship with defendant. Defendant also asserts it was misconduct for the prosecutor to refer to this evidence during his opening statement and his closing argument. However, defendant failed to preserve this issue for appeal by objecting to both the prosecutor's questioning of the witnesses and to his statements. Therefore, we may review the issue only if the failure to do so would result in a miscarriage of justice or a curative instruction could not have removed the prejudicial effect. *People v McElhaney*, 215 Mich App 269, 283; 545 NW2d 18 (1996). A miscarriage of justice will not be found unless the prejudicial effect of the prosecutor's comments were so great that it could not have been cured with a proper instruction. *People v Rivera*, 216 Mich App 648, 651-652; 550 NW2d 593 (1996). Because the evidence was not improper, we decline to address this issue. *McElhaney*, *supra*. Moreover, apart from making a conclusory statement that the evidence was improper character evidence, defendant fails to explain why the evidence should have been excluded under MRE 404(b). Where a defendant fails to cite authority to support his position, the defendant effectively abandons the issue. *People v Piotrowski*, 211 Mich App 527, 530; 536 NW2d 293 (1995).

Finally, defendant argues that he was denied effective assistance by trial counsel's failure to object to the alleged misconduct. Defendant did not preserve the issue of ineffective assistance of counsel by moving for a new trial or a *Ginther* hearing[1], and our review is therefore limited to the record. *People v Dixon*, 217 Mich App 400, 408; 552 NW2d 663 (1996). We find that defense counsel's performance did not fall below an objective standard of reasonableness, *People v Strickland*, 466 US 668, 687-688; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994), because the disputed testimony concerning his relationship with the victim and his threats against her were admissible to prove defendant's intent and whether he acted with premeditation and deliberation. See *People v Fisher*, 449 Mich 441, 453; 537 NW2d 577 (1995) and *People v Miller (After Remand)*, 211 Mich App 30, 38-40; 535 NW2d 518 (1995). Sanders' testimony about her own relationship with defendant was also necessary to permit the jury to assess her bias and credibility. See *People v Mills*, 450 Mich 61, 71-74; 537 NW2d 909, modified

450 Mich 1212 (1995).[2] Moreover, we note that defense counsel also questioned Sanders about her relationship with defendant to demonstrate potential

bias on the part of Sanders. This Court will not second-guess trial counsel's strategic decisions. *People v Barnett*, 163 Mich App 331, 338; 414 NW2d 378 (1987).

Affirmed.

/s/ Barbara B. MacKenzie
/s/ William C. Whitbeck
/s/ Glenn S. Allen, Jr.

[1] *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

[2] We also note that any error in the admission of this testimony was harmless in light of the other evidence of defendant's guilt. *People v Williamson*, 205 Mich App 592, 596; 517 NW2d 846 (1994).