STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RENARDO FRED LANE,

Defendant-Appellant.

UNPUBLISHED
February 12, 1999

No. 203169
Calhoun Circuit Court
LC No. 96-001019 FC

Before: Markey, P.J., and Saad and Collins, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree felony murder, MCL 750.316; MSA 28.548, assault with intent to rob while armed, MCL 750.89; MSA 28.284, and two counts of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The assault conviction and associated felony firearm conviction were subsequently vacated on double jeopardy grounds, and defendant was then sentenced to mandatory life imprisonment for the first-degree murder conviction, and a consecutive two-year term for the felony-firearm conviction. He appeals by right. We affirm.

Defendant's convictions arise from the shooting death of Mark Bowser who, along with Jajuan Williams, was selling crack cocaine from the house of Charles Ellis Jackson. Also present in the home were Jackson's three children and their mother, Phyllis Goodwin.

On the evening of the shooting, defendant came to Jackson's house, recognized Bowser as his cousin, and the two had a conversation in the kitchen. Jajuan overheard defendant say that he intended to rob some dope houses, and Bowser replied that that was "stupid." Phyllis Goodwin overheard defendant say that Bowser was his cousin, and defendant intended to kill him. She went upstairs and told Jackson to get defendant out of the house. Defendant left shortly thereafter.

Jajuan and Bowser then went upstairs and smoked some marijuana. Defendant subsequently returned to the house, went upstairs, and began arguing with Bowser. Jajuan, who had been sleeping, was awakened by the argument. Defendant pointed a gun at Jajuan and told him to get his hands out of his pockets. Defendant then pointed the gun at Bowser and demanded cocaine. Bowser gave his

cocaine to defendant. Defendant next demanded money. Bowser said he didn't have any money. Jackson arrived and saw defendant pointing the gun at Bowser. Defendant said he would shoot Bowser in the leg if he refused to turn over his money. Again, Bowser said he had no money. Defendant responded, "I'll give you three seconds." Defendant then shot Bowser, who pulled out a gun and exchanged gunfire. Jajuan jumped behind the bed.

Phyllis Goodwin testified that, from another bedroom, she heard a voice say, "I don't have any money." She recognized defendant's voice and heard him say, "I've only got two minutes. Give it to me, I'll blow your brains out." Then she heard one shot and more quick shots.

After the shooting began, defendant ran out of the house. Bowser was shot in the chest. He tried to go down the stairs but collapsed part-way down. Bowser was dead when the police and medical units arrived.

Willie Holmes, defendant's cousin, testified that on the evening of the shooting, defendant broke into his house and ran into the bedroom where Holmes was sleeping. Defendant looked shocked and surprised. At trial, Holmes testified that defendant told him that he "thinks somebody got shot." According to Detective Walters, however, Holmes gave a statement claiming that defendant stated, "I just shot somebody." Holmes then told defendant to leave his house. Later, Holmes found defendant's jacket in his backyard and threw it in the trash.

On the first day of trial, defendant moved for a two-week continuance in order to review a transcript of Jackson's statement to police. The statement was taken shortly after the incident but was being transcribed just before trial. The court agreed to delay trial for one day. Defendant renewed his request for a two-week continuance the following day, again asserting that he needed more time to properly review the statement and adequately prepare to cross-examine and impeach Jackson. The trial court denied the motion upon finding that nothing in the statement warranted further adjournment and that defendant had ample time to consider the information.

Defendant now argues that the trial court abused its discretion in denying his request for an additional continuance, thereby requiring reversal of his convictions. We disagree. Defendant has not demonstrated any prejudice resulting from the trial court's denial of his request. MCL 769.26; MSA 28.1096; *City of Lansing v Hartsuff*, 213 Mich App 338, 350-351; 539 NW2d 781 (1995). Jackson did not testify until the third day of trial, thus providing defense counsel with more time to review the transcript and prepare for his cross-examination of Jackson. Also, in his cross-examination of Jackson, defense counsel successfully elicited testimony that Jackson admittedly lied to the police about several facts. Further, considering the overwhelming evidence against defendant, it is highly improbable that the denial of a continuance contributed to the verdict. *People v Gearns*, 457 Mich 170, 203-205; 577 NW2d 422 (1998); see, generally, *People v Minor*, 213 Mich App 682, 685-686; 541 NW2d 576 (1995). Thus, the trial court's denial of his request for an additional continuance did not deprive defendant of a fair trial. *Hartsuff, supra.*

Next, defendant argues that the trial court erred by denying his request for an instruction on voluntary manslaughter. We disagree. When requested by a party, a standard jury instruction must be

given if it is requested, applicable, and accurately states the law. MCR 2.516(D)(2). Where the facts do not warrant an instruction, however, the trial court need not give it. *People v Piper*, 223 Mich App 642, 648; 567 NW2d 483 (1997). We agree with the trial court that the evidence did not support an instruction on voluntary manslaughter. Viewed most favorably to defendant, the facts do not establish the required element of provocation necessary to support an instruction for manslaughter. *People v Hess*, 214 Mich App 33, 38; 543 NW2d 332 (1995). Accordingly, the trial court did not err in refusing to instruct the jury on voluntary manslaughter.

Next, defendant argues that the trial court erred when it allowed Detective Walters to testify that Willie Holmes told him defendant said, "I just shot somebody." Because defendant did not object to this testimony at trial, review of this issue is foreclosed absent manifest injustice. *People v Welch*, 226 Mich App 461, 463; 574 NW2d 682 (1997). Here, the testimony was offered to impeach Holmes' earlier testimony wherein Holmes claimed defendant had merely stated that he "thinks somebody got shot." Moreover, the exception set forth in *People v Stanaway*, 446 Mich 643, 692-693; 521 NW2d 557 (1994), to the general rule that evidence of a prior inconsistent statement may be admitted to impeach a witness, even though the statement tends directly to inculpate the defendant, is not applicable here.

> The rule set forth in *People v Stanaway* is that the impeachment should be disallowed when (1) the substance of the statement purportedly used to impeach the credibility of the witness is relevant to the central issue of the case, and (2) there is no other testimony from the witness for which his credibility was relevant to the case. [*People v Kilbourn*, 454 Mich 677, 682-683; 563 NW2d 669 (1997).]

Because Holmes' credibility is relevant to his other proffered testimony regarding finding a jacket he believed to be defendant's in his backyard and regarding his broken back door, Detective Walters' impeachment testimony was proper. *Kilbourn, supra*. Accordingly, manifest injustice will not result from our failure to review this issue.

Finally, we conclude that defendant was not denied the effective assistance of counsel. *People v Ginther*, 390 Mich 436, 443-444; 212 NW2d 922 (1973); *People v Barclay*, 208 Mich App 670, 672; 528 NW2d 842 (1995). In the absence of a *Ginther* hearing, we find that the record does not support defendant's contention that counsel's performance fell below an objective standard of reasonableness or deprived him of a fair trial. *People v Stewart (On Remand)*, 219 Mich App 38, 42; 555 NW2d 715 (1996); *Barclay*, *supra*.

We affirm.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Jeffrey G. Collins