

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DOMINIC PAUL BURDIS,

Defendant-Appellant.

UNPUBLISHED

March 19, 1999

No. 202388

Bay Circuit Court

LC No. 95-001053 FC

Before: White, P.J., and Markman and Young, Jr., JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of first-degree premeditated murder, MCL 750.316(1)(a); MSA 28.548(1)(a), and first-degree felony-murder, MCL 750.316(1)(b); MSA 28.548(1)(b). Defendant was sentenced to two concurrent mandatory life prison sentences without the possibility of parole. We remand for modification of defendant's judgment of sentence.

On June 17, 1994, the victim, Leona Patricia Stevenson ("Pat"), was found dead inside her home. She was naked from the waist down and had been beaten with a wrench and stabbed approximately thirty-five times. The prosecution's theory was that defendant, a friend of the victim's son, first attacked the victim in the kitchen in an attempt to commit criminal sexual conduct, and that defendant struck the victim in the head some fifteen to twenty times as she crawled through the kitchen and dining room toward the living room in an attempt to reach the front door. Then, as the victim lay nearly motionless, defendant repeatedly stabbed her.

Defendant's fingerprints were found on one of two kitchen knives used to kill the victim. Moreover, bloody shoe prints left at the scene were consistent with the pattern on the soles of a pair of shoes that defendant may have had at the time of the murder, and DNA testing revealed defendant's blood mixed with the victim's in a bloodstain found at the scene. In addition, one of defendant's friends, William Price, testified that defendant talked to him about murdering Ms. Stevenson just hours before the killing, and later showed up at Price's house in bloody clothes saying, "I did it. I killed her." Price also testified that, when defendant arrived at his house, defendant's hand was bleeding where he apparently had cut one of his fingers. After his arrest, defendant also made several incriminating

statements to the police.¹ Following a twenty-six day jury trial, defendant was convicted of both premeditated murder and felony-murder and sentenced to two concurrent life prison terms without the possibility of parole.

Defendant first contends that the trial court erred in precluding defense counsel from arguing in his closing argument that it was Leon Boyd who killed the victim. During his opening statement, defense counsel acknowledged that defendant, Bobby Blair, and Boyd went to the victim's house planning to rob her. However, defense counsel asserted that Boyd was the one who committed the murder, although at one point he stated that the defense's theory was "that there were two men assaulting and assailing that woman that night, not one, two, Bobby [Blair] and Leon, but not – not Dominic."² The trial court later found that there was no evidence from which the jury could reasonably infer that Boyd was present at the time of the killing and precluded defense counsel from suggesting in closing arguments that Boyd was the killer.³ Defendant argues that defense counsel should have been allowed to argue that Boyd was the murderer primarily due to the presence of type A antigen on a bloody t-shirt and a pair of the victim's shorts found at the scene, which antigen was consistent with Boyd's blood type and inconsistent with the blood types of both defendant and the victim. Defendant also cites evidence relating to Boyd's possible motive for committing the murder and his knowledge of incidents surrounding it.

We find no error requiring reversal because, while defense counsel was precluded from directly arguing that Boyd was the killer, counsel was permitted to and did argue at length that Bobby Blair and another person were at the scene along with defendant, and that defendant "was set up by someone and Bobby." In addition, despite the trial court's ruling, defense counsel repeatedly insinuated during his closing argument that Boyd was the third person.⁴ These arguments, taken together with defense counsel's opening statement, leave us with no doubt that the jury was fully apprised of defendant's theory of the case.

Next, defendant claims that the trial court violated defendant's right of confrontation when it refused to permit defendant to impeach Bobby Blair with prior inconsistent statements. At trial, Blair denied being at the victim's house at the time of the murder. He also denied being with defendant at all that night. Defense counsel later sought to impeach Blair by showing through the testimony of Tracey Bernard that Blair made statements to her indicating that Blair *was* at the victim's house at the time of the murder. Bernard would allegedly have testified that Blair told her that the police "don't really know what happened and who was there," that defendant and two other people went to the victim's house to rob her, and that defendant tried to stop the killing but was unsuccessful. The trial court disallowed Bernard's proposed testimony on the grounds that it was hearsay and because no foundation had been laid for its admission.

Initially, we question whether the statements at issue directly tended to disprove Blair's testimony that he was not at the victim's house at the time of the murder. "As a general rule, the only contradictory evidence that is admissible is that which directly tends to disprove the exact testimony of the witness." *People v Johnson*, 113 Mich App 575, 579; 317 NW2d 689 (1982). However, even assuming that the alleged statements were sufficiently contradictory and that Bernard's proposed testimony should have been allowed, any error in refusing admission of this testimony was harmless

because other witnesses testified to essentially the same set of statements that the defense sought to introduce through Bernard's testimony. See *People v Wofford*, 196 Mich App 275, 281; 492 NW2d 747 (1992). Furthermore, there was overwhelming evidence of defendant's guilt.

Next, defendant claims that the trial court erred in refusing to allow evidence of Blair's juvenile adjudication to be introduced for impeachment purposes. We disagree. A trial court's decision to allow impeachment by evidence of a prior conviction is within its sound discretion and will not be reversed on appeal absent an abuse of that discretion. *People v Coleman*, 210 Mich App 1, 6; 532 NW2d 885 (1995). In the instant case, the trial court found that Blair's juvenile convictions for breaking and entering and larceny in a building "basically ha[ve] no probative value" because Blair was eleven years old at the time he committed those crimes and seventeen years old at the time of trial. The court reasoned that Blair's maturity level would significantly have changed in that time. We cannot say that the trial court abused its discretion in deciding this close evidentiary question.

Defendant also claims that the trial court's conduct denied him a fair trial. Because no objection was raised at trial, this issue has not been preserved for review. *People v Grant*, 445 Mich 535, 547; 520 NW2d 123 (1994). However, review may be granted if failure to consider the issue would result in manifest injustice. *Paquette, supra* at 340. We find no manifest injustice in this case because none of the trial court's allegedly improper remarks or conduct deprived defendant of a fair trial.

Finally, defendant asserts that his double jeopardy rights were violated by his convictions and sentences for both first-degree premeditated murder and first-degree felony murder arising out of a single death. We agree. In *People v Bigelow*, 229 Mich App 218, 220; 581 NW2d 744 (1998), a conflict panel of this Court held that the proper remedy "'is to modify defendant's judgment of conviction and sentence to specify that defendant's conviction is for one count and one sentence of first-degree murder supported by two theories: premeditated murder and felony murder.'" (Citation omitted). Therefore, in accordance with *Bigelow*, we remand the matter to the trial court with instructions to modify defendant's judgment of sentence to specify that defendant's conviction is for one count of first-degree murder supported by two theories: felony-murder and premeditated murder. Moreover, defendant's judgment of sentence should reflect that his single sentence for that conviction is life imprisonment without parole. *Id.* at 222.

Remanded for modification of the judgment of sentence in accordance with this opinion. We do not retain jurisdiction.

/s/ Helene N. White

/s/ Stephen J. Markman

/s/ Robert P. Young, Jr.

¹ Defendant told police that he could only remember "bits and pieces" of what happened because he was high on crack cocaine. He said that he had had dreams about being at the victim's house and about his fingerprints being there. There was testimony that when confronted with the fact that police recovered bloody shoes from Bobby Blair's house, defendant admitted trading shoes with Blair and cleaning blood off the shoes with Windex. When asked if he had gone to the victim's house with the

intention of killing her, defendant responded, “I don’t know why I went over there.” Defendant told police that he had “flipped out” before but “never that bad.”

In a later interview, defendant told police that he “felt that he had really killed Patty and that he felt bad about it, and that he was sorry for it.” Defendant remembered seeing blood on his shorts, his right leg and on the socks and tennis shoes he was wearing.

² This was the first time that the prosecution became aware of Leon Boyd’s alleged involvement in the murder.

³ Boyd testified that he was in Saginaw at the time of the murder.

⁴ Indeed, the prosecutor even objected at one point, arguing that defense counsel was attempting to circumvent the trial court’s decision.