

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DOUGLAS SUWEWANNAK SHUMAN,

Defendant-Appellant.

UNPUBLISHED

May 16, 2000

No. 214249

St. Joseph Circuit Court

LC No. 97-008546-FC

Before: Jansen, P.J., and Hoekstra and Collins, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of first-degree murder, MCL 750.316; MSA 28.548, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The trial court sentenced him to two concurrent terms of life in prison for the murder convictions and two years in prison for the felony-firearm conviction. Defendant appeals his convictions and sentences as of right. We affirm.

Defendant's convictions arose from the deaths of his parents. He admitted to police detectives on the morning following the murders that he shot his mother once in the face. She died within minutes. Defendant also admitted shooting his father multiple times later that evening. His father ran outside during the shooting and was hit by a passing car. He died at the hospital that evening.

Defendant first argues that the prosecution failed to present sufficient evidence for the jury to find either that defendant premeditated his mother's death or that his actions caused his father's death. In reviewing the sufficiency of the evidence, this Court considers the evidence in the light most favorable to the prosecution and determines whether a rational trier of fact could conclude that the essential elements of the crime were proven beyond a reasonable doubt. *People v Plummer*, 229 Mich App 293, 299; 581 NW2d 753 (1998). Circumstantial evidence and reasonable inferences that arise therefrom may be sufficient to prove the elements of an offense. *Id.*

We conclude that the prosecution presented sufficient evidence for the jury to find that defendant premeditated his mother's killing. In order to convict a defendant of first-degree murder, the prosecution must prove 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 requires sufficient time for the defendant to take “a second look.” *Plummer, supra* at 300. Premeditation and deliberation may be inferred from all the facts and circumstances, but the inferences must have support in the record and cannot be drawn based on mere speculation. *Id.* at 301. A non-exhaustive list of factors which may be considered to establish premeditation includes: (1) the previous relationship between the defendant and the victim; (2) the defendant’s actions before and after the crime; and (3) the circumstances of the killing itself, including the weapon used and the location of the wounds inflicted. *Id.* at 300.

Here, the prosecution presented evidence of defendant’s prior relationship with his mother that tended to show a motive. Specifically, the prosecution introduced defendant’s statement in which he asserted that his parents could not get over the “bad stuff” he had done, that he was tired of being compared to other people’s children, and that he knew that they would soon learn of the checks that he had most recently stolen from his grandfather and that the “troubles” would begin again. The prosecution also presented evidence that defendant acquired a rifle and bullets and learned how to shoot the rifle on the day that he killed his mother. Defendant’s own testimony about purchasing the bullets on the day of the murders was corroborated by his friend’s testimony that defendant wanted to purchase the bullets that day, was “agitated” when the friend initially declined, and asked the friend about how to load the gun. Last, the prosecution presented defendant’s own statement that when he retrieved the gun from his parents’ bedroom, “I guess I was planning on shooting my mom then.”

From this evidence, the jury could infer that defendant premeditated his mother’s killing. Although defendant proffered his theory that he did not plan to kill his mother and had merely purchased the bullets on the day of her death because he wished to shoot woodchucks on the weekend, a prosecutor need not negate every reasonable theory of innocence. *People v Quinn*, 219 Mich App 571, 574; 557 NW2d 151 (1996). Rather, the prosecution need only prove its own theory beyond a reasonable doubt in the face of whatever contradictory evidence the defendant provides. *Id.* Here, there was sufficient evidence to support the prosecution’s theory of premeditation beyond a reasonable doubt.

We also conclude that the evidence presented at trial was sufficient to prove that defendant’s actions caused his father’s death. To warrant a conviction of homicide, death must be the natural and probable consequence of the unlawful act and not the result of an independent intervening cause in which the accused did not participate and which he could not foresee. *People v Bowles*, 234 Mich App 345, 349-350; 594 NW2d 100 (1999).

Defendant’s argument that his conviction rests upon uncertain medical speculation about the cause of his father’s death overlooks that portion of the pathologist’s testimony that without prompt medical attention, his father would have certainly died of the gunshot wounds alone. Therefore, there was evidence from which the jury could find that his father’s death was the natural and probable consequence of defendant’s unlawful act. Conversely, there was also sufficient evidence from which the jury could reach the conclusion that his father’s death was not attributable to the independent act of the third person driving the car that hit defendant’s father. The pathologist testified that it was “not likely at

all” that defendant’s father would have died from his injuries from the car accident alone and that the car accident was not itself life threatening.

Next, defendant argues that the trial court abused its discretion in admitting evidence of certain of defendant’s prior bad acts, to wit, multiple instances of theft from his grandfather and lies that defendant told his high school friends about where he was going to school and work. According to defendant, the evidence was irrelevant and unduly prejudicial. The admissibility of other acts evidence is within the trial court’s discretion and will be reversed on appeal only when there has been a clear abuse of discretion. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998). An abuse of discretion exists only when an unprejudiced person, considering the facts on which the trial court acted, would say that there was no justification or excuse for the ruling made. *People v Rice (On Remand)*, 235 Mich App 429, 439; 597 NW2d 843 (1999). Under MRE 404(b), other acts evidence is admissible if it is offered for a proper purpose, it is relevant, and its probative value is not substantially outweighed by its potential for unfair prejudice. *People v VanderVliet*, 444 Mich 52, 74; 508 NW2d 114 (1993). However, it is not admissible if offered solely to show the criminal propensity of an individual and that he acted in conformity with that propensity. *Id.* at 65. Essentially, other acts evidence is admissible whenever it is relevant on a noncharacter theory. *People v Gimotty*, 216 Mich App 254, 259; 549 NW2d 39 (1996).

We conclude that the trial court did not abuse its discretion in finding that the challenged other acts evidence was relevant to defendant’s motive for his unprovoked shooting of his parents and was not unduly prejudicial. The evidence showed that defendant had a history of stealing from his grandfather and lying about his attendance at school, among other things, and that this behavior had caused considerable tension between him and his parents. Absent this evidence establishing a motive for defendant to murder his parents, the jurors may have found it difficult to believe that defendant committed an otherwise inexplicable act. See, e.g., *People v Hoffman*, 225 Mich App 103, 109-110; 570 NW2d 146 (1997).

Defendant also argues that defendant was denied a fair trial because the prosecution did not abide by the limited purpose for which the other acts evidence was admitted at trial. Specifically, defendant contends that during closing and rebuttal arguments, after referring to the other acts evidence, the prosecution repeatedly and improperly characterized defendant as a liar and argued that defendant could not be believed when he testified that he obtained ammunition for the gun so that he could shoot woodchucks. The test for prosecutorial misconduct is whether the conduct complained of denied defendant a fair trial. *People v Bahoda*, 448 Mich 261, 266-267; 531 NW2d 659 (1995); *People v Paquette*, 214 Mich App 336, 341-342; 543 NW2d 342 (1995). The reviewing court examines the record and evaluates the alleged improper remarks in context. *Id.* Because defendant did not object at trial to the alleged misconduct, appellate review is precluded unless the misconduct was so egregious that a curative instruction could not have eliminated possible prejudice or failure to consider the issue would result in a miscarriage of justice. *Id.* at 341-342.

Assuming without deciding that the prosecutor’s statements were improper, we conclude that the challenged statements did not deprive defendant of a fair trial. First, the prosecutor did not argue that the jury should consider the other acts evidence as substantive evidence of defendant’s guilt. Cf.

People v Quinn, 194 Mich App 250, 252-253; 486 NW2d 139 (1992). Further, the prosecutor's statements regarding defendant's credibility were not all premised on the evidence that defendant had a history of lying. The prosecutor also pointed to numerous inconsistencies between defendant's statement and the testimony of several witnesses at trial. Also, the trial court gave a limiting instruction regarding the proper use of the other acts evidence. Finally, given defendant's own statement regarding his intent when he retrieved the gun from his parents' bedroom, any possible prejudice resulting from the prosecutor's comments was minimal and could have been cured with an instruction timely requested. Accordingly, manifest injustice will not result from our failure to review this issue.

Defendant's last argument on appeal is that his confession was improperly admitted because he did not knowingly and intelligently waive his Fifth Amendment rights. See *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602, 1612; 16 L Ed 2d 694; *In re Abraham*, 234 Mich App 640, 645; 599 NW2d 736 (1999). We disagree. Whether a suspect has knowingly and intelligently waived his *Miranda* rights depends in each case on the totality of the circumstances, including the defendant's intelligence and capacity to understand the warnings given. *People v Howard*, 226 Mich App 528, 538; 575 NW2d 16 (1997).

We have carefully reviewed the record of defendant's statement and the hearing on its admissibility in this case. Nothing in that record indicates that any of the factors cited by defendant in support of his argument affected his capacity to voluntarily and intelligently waive his *Miranda* rights. Accordingly, the trial court did not err in refusing to suppress defendant's confession on this basis.

Affirmed.

/s/ Kathleen Jansen

/s/ Joel P. Hoekstra

/s/ Jeffrey G. Collins