

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JESSIE BRANTLEY,

Defendant-Appellant.

UNPUBLISHED

June 27, 2000

No. 213407

Wayne Circuit Court

LC No. 97-009405

Before: Owens, P.J., and Neff and Fitzgerald, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree premeditated murder, MCL 750.316; MSA 28.548, felonious assault, MCL 750.82; MSA 28.277, and possession of a firearm during the commission of a felony, MCL 750.227(b); MSA 28.424(2). He was sentenced to life imprisonment for the first-degree murder conviction, one to four years' imprisonment for the felonious assault conviction, and two years' imprisonment for the felony-firearm conviction. We affirm.

On September 6, 1997, Daryl Lee was at work roofing a house. When Lee left for work, he took with him keys and money belonging to his girlfriend, Angela Hughes. Hughes contacted defendant, requesting a ride to the location where Lee was working in order to retrieve the items from Lee. Upon arriving at the house where Lee was working, Hughes asked Lee for her keys and money. Lee denied having the items, and Hughes indicated that she, defendant, and two other people who were with them should leave. When they returned to defendant's car, defendant removed a shotgun from the trunk, returned to the house where Lee was working, and shot Lee. Lee died as a result of multiple gunshot wounds.

Defendant argues that the trial court's failure to sua sponte instruct the jury regarding involuntary manslaughter (gross negligence) denied defendant his due process rights. We disagree. Appellate review of a claim of error from the failure to provide a jury instruction is waived unless the party requested the instruction at trial or a miscarriage of justice would result from failure to consider the issue. *People v Messenger*, 221 Mich App 171, 177; 561 NW2d 463 (1997). After a thorough review of the record, we conclude that a miscarriage of justice will not result from our failure to review the issue. The omission of a requested instruction is harmless where the jury was instructed on an intermediate

charge, but found the defendant guilty of the greater charge. *People v Beach*, 429 Mich 450, 490-491; 418 NW2d 861 (1988). In this case, the jury was instructed on the offenses of second-degree murder, voluntary manslaughter, and involuntary manslaughter-firearm intentionally aimed. Defendant was found guilty of the greater charge of first-degree premeditated murder. Therefore, even if defendant had requested an instruction on involuntary manslaughter that the trial court erroneously failed to provide, the error would have been harmless.

Defendant argues in the alternate that defense counsel was ineffective for failing to request the instruction on involuntary manslaughter. Because we have concluded that omission of the instruction was harmless, defendant can demonstrate no prejudice as a result of counsel's failure to request the instruction. *People v Pickens*, 446 Mich 298, 312, 314; 521 NW2d 797 (1994).

Defendant also argues that he was denied a fair trial by the prosecutor's comment that defendant was a liar. Because defendant did not object at trial to the comment, review is precluded unless the prejudicial effect of the misconduct could not have been cured by a cautionary instruction or manifest injustice would result by not considering the issue. *People v Truong (After Remand)*, 218 Mich App 325, 336; 553 NW2d 692 (1996). Here, a cautionary instruction could have remedied any impropriety in the prosecutor's comment. Further, manifest injustice will not result from our failure to review the issue because the evidence of defendant's guilt was overwhelming. *People v Wess*, 235 Mich App 241, 247; 597 NW2d 215 (1999).

Last, defendant argues that the evidence was not sufficient to establish the elements of premeditation and deliberation. In reviewing the sufficiency of the evidence, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the elements of the crime were proven beyond a reasonable doubt. *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998).

First-degree premeditated murder requires that the prosecution "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 and deliberation require sufficient time to allow the defendant to take a second look." *Id.* "Though not exclusive, factors that may be considered to establish premeditation include the following: (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." *People v Plummer*, 229 Mich App 293, 300; 581 NW2d 753 (1998). Premeditation and deliberation can be inferred from the facts and circumstances, provided the inferences are supported by the record and not based on mere speculation. *Id.* at 300-301.

Viewed in a light most favorable to the prosecution, the evidence showed that defendant took a shotgun from the truck of his vehicle and crossed the street to the enclosed porch where the victim was sitting. Hughes pulled on defendant and stood in front of him in an attempt to block defendant's access to the victim, but defendant pushed her aside. When defendant arrived at the door to the enclosed porch, the homeowner was on the other side of the door holding the handle of the door. Defendant pulled on the door, and when the homeowner would not let him enter, defendant asked, "Do you want

me to shoot you too?” Once defendant was on the porch with the victim, he aimed the gun at him. Medical testimony established that the first shot to the victim’s legs disabled him and the second shot occurred with the barrel of the shotgun touching the victim’s face. Given these facts, we conclude that the evidence was sufficient to allow a rational trier of fact to conclude that the shooting was premeditated and deliberate.

Affirmed.

/s/ Donald S. Owens

/s/ Janet T. Neff

/s/ E. Thomas Fitzgerald