

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARC ANTHONY OSBORNE,

Defendant-Appellant.

UNPUBLISHED

November 27, 2001

No. 225868

Kent Circuit Court

LC No. 99-006518-FC

Before: Griffin, P.J., and Gage and Meter, JJ.

PER CURIAM.

After a jury trial, defendant was convicted of first-degree murder under theories of premeditation, MCL 750.316(1)(a), and felony murder, specifically murder during the perpetration of third-degree criminal sexual conduct. MCL 750.316(1)(b). The trial court sentenced defendant to life imprisonment without parole. Defendant appeals as of right. We affirm.

Defendant first contends that the trial court erroneously admitted under MRE 404(b) references to various aspects of defendant's character, which were relevant only to the extent that they tended to establish the impermissible inference that defendant might have acted in conformity with the examples of his character when he murdered the victim. *People v Crawford*, 458 Mich 376, 383-390; 582 NW2d 785 (1998). According to defendant, the trial court should have redacted from a tape recorded confession by defendant, which was played for the jury at trial, defendant's references to (1) having worn a "wife-beater" shirt, which defendant explained was a short-sleeved white undershirt; (2) his and the victim's pagan beliefs; (3) witchcraft; (4) a t-shirt worn by defendant on the night of the murder, on which defendant designed images of an upside down cross, which reflected a fallen Christian, the letter "A" for anarchy, and a Marilyn Manson logo; (5) assault crimes that he might have committed while a juvenile; and (6) that he had attended anger management classes.

Irrespective whether the trial court clearly abused its discretion in admitting these details under MRE 404(b),¹ our examination of the properly admitted evidence convinces us that any

¹ We note that the evidence of defendant's juvenile adjudications and anger management classes
(continued...)

error was harmless.² In his third statement to the police, defendant explained that on the night of the murder he and the victim had violent but consensual sex in the park where the police later discovered the victim's body. Defendant admitted that a subsequent argument, involving whether to advise the victim's steady boyfriend regarding their sex act, escalated out of control. Enraged after the victim slapped him, defendant stabbed the victim in her back causing her to scream, then decided to relieve the victim's suffering by stabbing her through her heart. When the stabbings failed to kill the victim, defendant manually strangled the victim to death; defendant recalled that the strangulation "seem[ed] like it took years."³ After successfully ending the victim's life, defendant attempted to arrange the murder scene to reflect a rape or robbery of the victim: defendant hit the victim's forehead with a glass bottle she had been drinking from, ripped the victim's clothing, removed her underwear, emptied her purse, then fled the scene and discarded various items of physical evidence. Defendant informed the police where he had thrown the knife that he had used to stab the victim and another location where he had discarded his bloody shirt, and the police later recovered both the knife and shirt where defendant had stated they would be.

On the day following the murder, a witness observed scratches on defendant's chest, which defendant explained by inquiring, "Have you ever had sex with a wild, crazy, drunk woman?" According to the witness, defendant clarified that the woman to whom he referred was the victim. An expert witness opined that DNA within seminal fluid obtained from the victim's body was consistent with defendant's DNA through each of the nine loci tested. The expert calculated that the likelihood of randomly selecting another individual unrelated to defendant whose DNA matched that within the sperm taken from the victim's body "would be, in the Caucasian population, one in 169.3 billion." A forensic pathologist testified, consistently with the version of the murder related by defendant, that strangulation caused the victim's death, that the victim had stab wounds in her back and left chest area that were inflicted while the victim was alive, and that the victim had lacerations and bruises on her forehead and temple. The t-shirt defendant designed was found inside a bag that also contained identification cards of the victim. The last person to see the victim alive on the night of the murder, with defendant, observed that both defendant and the victim had knives.

In light of this overwhelming and untainted evidence, we cannot conclude that it is more probable than not that a different outcome would have resulted absent the allegedly erroneous

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tended to rebut statements that defense counsel elicited from a previous witness concerning defendant's caring and gentle character.

² We also observe that defendant raises in his brief on appeal several other allegedly improper examples of character evidence to which he apparently did not specifically object before the trial court. These items include defendant's references during his statement to a "Nazi" shirt, his reluctance to investigate Satanism despite the victim's urging to do so, his affinity for "blood rituals," and prior acts of self-mutilation. We clarify that we have reviewed these unpreserved assertions of error, together with defendant's preserved claims of error, but nonetheless conclude that all these asserted errors qualify as harmless.

³ A forensic pathologist approximated that strangulation must have occurred for about three minutes.

admission of character-related evidence by the trial court. *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999).

Defendant also asserts that the prosecutor misled the jury by arguing that vaginal swabs from the victim contained blood. After reviewing defendant's unpreserved claim, however, we find that the prosecutor properly responded to defense counsel's contentions and argued the evidence introduced at trial and reasonable inferences arising therefrom. *People v Schutte*, 240 Mich App 713, 720-721; 613 NW2d 370 (2000).

Lastly, in light of our finding that the trial court's asserted evidentiary errors qualified as harmless, we reject defendant's claim that the cumulative effect of trial errors deprived him a fair trial. *People v Knapp*, 244 Mich App 361, 387-388; 624 NW2d 227 (2001).

Affirmed.

/s/ Richard Allen Griffin

/s/ Hilda R. Gage

/s/ Patrick M. Meter