

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

STACEY C. INGRAM,

Defendant-Appellant.

UNPUBLISHED

December 20, 2002

No. 223970

Wayne Circuit Court

LC No. 99-000865

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

MARIO E. INGRAM,

Defendant-Appellant.

No. 224907

Wayne Circuit Court

LC No. 99-000865

Before: Gage, P.J., and Cavanagh and Wilder, JJ.

PER CURIAM.

Defendants Stacey and Mario Ingram were tried jointly before separate juries, having been originally charged with alternative theories of first-degree premeditated and felony-murder.¹ Stacey Ingram was convicted of first-degree felony-murder, MCL 750.316, and Mario Ingram was convicted of second-degree murder, MCL 750.317. Stacey Ingram was sentenced to life imprisonment for the felony-murder conviction, and Mario Ingram was sentenced to forty to sixty years' imprisonment for the second-degree murder conviction. Both defendants appeal as of right. We affirm.

Defendant Stacey Ingram argues that her statement to the police could not be used to establish the underlying felony and, therefore, there was insufficient evidence to support her

¹ The felony-murder charge against Mario Ingram was dismissed before trial.

first-degree felony-murder conviction, as well as insufficient evidence to justify binding her over for trial. We disagree.

The sufficiency of the evidence is to be evaluated by reviewing the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that every element of the crime was proven beyond a reasonable doubt. *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000). Circumstantial evidence and reasonable inferences from the evidence are sufficient to establish the elements of a crime. *People v Schultz*, 246 Mich App 693, 702; 635 NW2d 491 (1991). Resolving credibility disputes is within the exclusive province of the trier of fact. *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002).

Contrary to what Stacey Ingram argues, the corpus delicti rule is satisfied in a felony-murder case by showing that “a death has occurred and that the death resulted from a criminal agency.” *People v Hughey*, 186 Mich App 585, 589; 464 NW2d 914 (1990). Independent proof of the underlying felony is not required. *Id.* at 586-590.

In the present case, the medical examiner’s testimony was sufficient to prove that the victim’s death was the result of a criminal agency (ligature strangulation). Thus, the corpus delicti for felony-murder was established. In her statement to the police, Stacey Ingram stated that she knew that Mario Ingram was going to ask the victim for money, and changed seats with him before the fatal assault. When Mario Ingram began strangling the victim, Stacey Ingram assisted him by putting the car in park and relocking the car door after the victim managed to unlock it. After the victim was dead, Stacey Ingram took money out of her wallet and shared it with Mario Ingram, helped Mario Ingram place tape on the victim’s mouth and nostrils, helped Mario dispose of the victim’s body and abandon the victim’s child, kept the victim’s car and wallet, and obtained cash for herself and Mario Ingram using the victim’s ATM card. Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a rational trier of fact to find beyond a reasonable doubt that Stacey Ingram assisted Mario Ingram with knowledge that Mario intended to kill the victim during the course of a larceny. *People v Kelly*, 423 Mich 261, 278-279; 378 NW2d 365 (1985).

Furthermore, because sufficient evidence was presented at trial to support Stacey Ingram’s convictions, any error in the sufficiency of the evidence at the preliminary examination was harmless. *People v Moorner*, 246 Mich App 680, 682; 635 NW2d 47 (2001).

Stacey Ingram also argues that the trial court erred in denying her motion for a directed verdict on the charge of first-degree premeditated murder. We disagree.

In reviewing a trial court’s decision on a motion for directed verdict, we must similarly view the evidence “in the light most favorable to the prosecution to determine whether a rational factfinder could find that the essential elements of the charged crime were proved beyond a reasonable doubt.” *People v Davis*, 216 Mich App 47, 52-53; 549 NW2d 1 (1996). Although the jury did not convict Stacey Ingram of first-degree premeditated murder, we are satisfied from the circumstances described above, the length of time necessary to cause death from ligature strangulation, as well as Stacey Ingram’s behavior before, during, and after the killing, that the evidence was sufficient to present the question of premeditation and deliberation to the jury. See *People v Johnson*, 460 Mich 720, 733; 597 NW2d 73 (1999); *People v Ortiz*, 249 Mich App 297, 301; 642 NW2d 417 (2002); *People v Jones (On Rehearing)*, 201 Mich App 449, 451; 506

NW2d 542 (1993). Therefore, the trial court did not err in submitting the first-degree premeditated murder charge to the jury.

Next, Stacey Ingram argues that the trial court erred in allowing police officers to testify that she lied to them about the victim's car before she was advised of her *Miranda*² rights. We disagree. We agree with the trial court that defense counsel opened the door to the challenged line of questioning by asking a police officer why Stacey Ingram was sent to detention. Counsel had pursued this line of questioning at a prior suppression hearing and, therefore, knew or should have known how the officer would respond. Reversal may not be premised on an "error to which the aggrieved party contributed by plan or negligence." *Phinney v Perlmutter*, 222 Mich App 513, 537; 564 NW2d 532 (1997).

We further note that the officers testified that, before her arrest, Stacey Ingram had lied when she told them that she didn't know who the car belonged to and denied having been in possession of it. Her former boyfriend had similarly testified that, as he was being arrested, Stacey Ingram "started lying that the car was [his]." Thus, the officers' testimony was cumulative to this other testimony. Accordingly, even if the officers' testimony could be considered improper, we would conclude that it was harmless beyond a reasonable doubt. *People v Anderson (After Remand)*, 446 Mich 392, 406; 521 NW2d 538 (1994).

Next, Stacey Ingram argues that the trial court erred in allowing evidence that the victim's daughter was abandoned on a stranger's doorstep after the crime. We disagree. A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion. *People v Smith*, 456 Mich 543, 550; 581 NW2d 654 (1998). Here, Stacey Ingram's treatment of the child was post-homicidal conduct, which was relevant to the issue of intent. See *People v Bigelow*, 225 Mich App 806, 808; 571 NW2d 520 (1997), vacated 225 Mich App 806 (1997), reinstated in pertinent part 229 Mich App 218, 221 (1998).

Stacey Ingram also argues that the trial court erred by failing to give an attempt instruction in conjunction with its instruction on felony-murder, which identified the underlying felony as attempted larceny. Because Stacey Ingram did not object to the instructions given or request an attempt instruction at trial, this issue is not preserved. Accordingly, we review this issue for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Here, whether or not Stacey Ingram's conduct constituted an attempted larceny was not a principal issue at trial. Indeed, it was apparent from the evidence that a completed larceny was accomplished. Against this backdrop, any error did not affect Stacey Ingram's substantial rights. Therefore, this unpreserved issue does not warrant appellate relief.

Next, Stacey Ingram argues that trial counsel was ineffective. Because Stacey Ingram did not raise this issue in a motion for a *Ginther*³ hearing or new trial, our review is limited to mistakes apparent from the record. *People v Davis*, 250 Mich App 357, 368; 649 NW2d 94 (2002).

² *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

³ *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).

First, counsel was not ineffective for failing to move to suppress the marijuana seized from Stacey Ingram at the time of her arrest. As discussed *infra*, Stacey Ingram was legally arrested, and the marijuana was therefore properly seized pursuant to a search incident to that lawful arrest. See *People v Champion*, 452 Mich 92, 115-117; 549 NW2d 849 (1996). Because a motion to suppress would have been futile, counsel was not ineffective for failing to so move. *People v Rodriguez*, 212 Mich App 351, 356; 538 NW2d 42 (1995).

We also disagree with Stacey Ingram's claim that counsel was ineffective for failing to cross-examine her former boyfriend at the preliminary examination. Whether to cross-examine the witness was a matter of trial strategy, entrusted to counsel's professional judgment. *People v Rockey*, 251 Mich App 74, 76; 601 NW2d 887 (1999). Here, Stacey Ingram does not indicate what helpful information could have been elicited through cross-examination, nor has she shown how cross-examination might have made a difference in the outcome. Indeed, considering that the witness had accused Stacey Ingram of stealing the victim's car, cross-examination might have been more damaging than helpful. Stacey Ingram has failed to overcome the presumption of sound trial strategy with regard to counsel's decision not to cross-examine the witness.

Next, Stacey Ingram claims defense counsel was ineffective for failing to move to suppress evidence that she had been shot and was a witness to another murder. We disagree. Defense counsel opposed the prosecutor's motion in limine to introduce evidence that she had given a statement in the previous case and the trial court ruled that this evidence was relevant, both to rebut the argument that Stacey Ingram's pregnancy made her weak and susceptible to undue influence, and to show that she was familiar with police procedure. Under the circumstances, the record does not demonstrate that counsel was ineffective for opposing the prosecution motion in limine rather than moving to suppress the disputed evidence. *People v Pickens*, 446 Mich 298, 312, 314; 521 NW2d 797 (1994).

Next, Stacey Ingram argues that the trial court erred when it instructed the jury on flight in accordance with CJI2d 4.4. We disagree. Several witnesses testified that Stacey Ingram and her sister were walking away from the scene after the police arrived and began arresting Stacey Ingram's former boyfriend and another male for possession of the victim's stolen car, which they had borrowed from Stacey Ingram. Whether they were walking rather than running is immaterial for purposes of determining whether an instruction on flight was warranted. The significance of the evidence was that they were observed leaving the scene. We find no error in the court's decision to instruct the jury on flight. See *People v Mills*, 450 Mich 61, 80-81; 537 NW2d 909 (1995), mod 450 Mich 1212 (1995).

Stacey Ingram next argues that the trial court erred in refusing to suppress her confession as the fruit of an illegal arrest. "We review de novo a trial court's ultimate decision on a motion to suppress." *People v McKinney*, 251 Mich App 205, 207; 650 NW2d 353 (2002), quoting *People v Beuschlein*, 245 Mich App 744, 748; 630 NW2d 921 (2001). However, we review the trial court's factual findings underlying its decision for clear error. *Id.* In this case, the police were already aware that the victim had been killed and that her automobile had been stolen. Further, immediately before Stacey Ingram was arrested, the police were informed that she had been driving the victim's car and had recently allowed two young men to use it, and that she was also attempting to leave the scene. The information provided to the police constituted reasonably trustworthy information giving rise to probable cause to believe that Stacey Ingram had committed a felony, possession of a stolen car. See *Champion*, *supra* at 115. We find no error

in the trial court's determination that Stacey Ingram was legally arrested without a warrant. See MCL 764.15. Because the arrest was not illegal, the trial court properly denied Stacey Ingram's motion to suppress her confession as the fruit of an illegal arrest.

Stacey Ingram next argues that the trial court abused its discretion in admitting certain morgue photographs. According to the record, the photos depicted petechia hemorrhage and ligature marks. They were relevant for purposes of determining Stacey Ingram's intent, evaluating her statement, and corroborating the medical examiner's testimony concerning the manner of death. *Mills, supra* at 71. Also, the trial court determined that the photos were not gruesome. Stacey Ingram has not shown that the probative value of the evidence was substantially outweighed by the danger of unfair prejudice. *Id.* at 76. Hence, we find no abuse of discretion.

Next, Stacey Ingram argues that the trial court abused its discretion in allowing her police statement to be read into evidence where the requirements of MRE 803(5) were not satisfied. Regardless of whether the foundational requirements of MRE 803(5) were met, Stacey Ingram's statement was admissible as an admission of a party opponent under MRE 801(d)(2)(A). Thus, reversal is not required because the trial court reached the right result. *Ford Credit Canada Leasing, Ltd v DePaul*, 247 Mich App 723, 730; 637 NW2d 831 (2001).

Stacey Ingram next argues that, given the results of her polygraph examination, the trial court erred in denying her motion for reconsideration of her motion to suppress. This Court reviews a trial court's decision in a motion for reconsideration for abuse of discretion. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000).

Defense counsel offered the polygraph results as essentially newly discovered evidence to support reconsideration of Stacey Ingram's motion to suppress evidence heard and denied more than two months earlier. Counsel conceded that the motion was being filed at the "last minute." The trial court denied the motion as one untimely made on the eve of trial. While the reasons offered by counsel for the untimely filing may have been meritorious, we cannot say that the trial court abused its discretion in denying the motion as untimely.

Next, Stacey Ingram and Mario Ingram both argue that the prosecutor committed misconduct depriving them of a fair trial when she "spoke" during opening statements in the "voice" of the victim speaking from the grave, in the voices of each defendant and, before Mario Ingram's jury, in the voice of the physical evidence. We review claims of prosecutorial misconduct to determine whether the defendant was deprived of a fair trial. *People v Bahoda*, 448 Mich 261, 266-267; 531 NW2d 659 (1995).

Clearly, a prosecutor may not appeal to the jurors' sympathies. *People v Watson*, 245 Mich App 572, 591; 629 NW2d 411 (2001). Similarly, "[a] prosecutor may not intentionally inject inflammatory arguments with no apparent justification except to arouse prejudice." *People v Lee*, 212 Mich App 228, 247; 537 NW2d 233 (1995). In arguing the evidence and its reasonable inferences, however, a prosecutor is not required to speak in the blandest possible terms. *People v Aldrich*, 246 Mich App 101, 112; 631 NW2d 67 (2001). Even if we were to agree with defendants that the technique used by the prosecutor was inappropriate, we are satisfied after considering the evidence presented against each defendant that there is no

reasonable possibility that the alleged misconduct contributed to the conviction. *Anderson, supra* at 406. Thus, any such errors were harmless beyond a reasonable doubt.

Lastly, Mario Ingram argues that the trial court abused its discretion by allowing the prosecutor to present evidence that some unspecified person used the victim's debit card after the murder. We disagree.

Mario Ingram was charged with first-degree premeditated murder. To prove this charge, the prosecution was required to prove that Mario Ingram intentionally killed the victim and that the act of killing was premeditated and deliberate. *Ortiz, supra* at 301. "Premeditation may be established through evidence of the following factors: (1) the prior relationship of the parties; (2) the defendant's actions before the killing; (3) the circumstances of the killing; and (4) the defendant's conduct after the homicide." *Bigelow, supra* at 808. "Minimal circumstantial evidence is sufficient to prove an actor's state of mind." *Ortiz, supra* at 301.

The prosecutor did not present any direct evidence to Mario Ingram's jury that Mario was involved in using the victim's ATM card after the murder, nor concerning the identity of the person who did. However, in light of the evidence of Mario Ingram's complicity with another person at the time the victim was killed, and the implausible denials and explanations contained in his statement, we believe that evidence showing the unauthorized use of the victim's ATM card shortly after the killing was relevant to the issue of Mario Ingram's intent. The trial court did not abuse its discretion in allowing the evidence.

Affirmed.

/s/ Hilda R. Gage
/s/ Mark J. Cavanagh
/s/ Kurtis T. Wilder