STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 17, 2004
v	No. 247598 Wayne Circuit Court
COURTNEY M. CRAIN, Defendant-Appellant.	LC No. 02-012745-01

Before: Cavanagh, P.J., and Jansen and Saad, JJ.

PER CURIAM.

The prosecution charged defendant Courtney M. Crain with the first-degree murder[1] of Delrico Riggs and with possession of a firearm during the commission of a felony ("felony-firearm.")[2] On February 6, 2003, a jury convicted defendant of second-degree murder[3] and felony-firearm. The trial court sentenced defendant to twenty-five to eighty years in prison for the second-degree murder conviction and to two-years' imprisonment for the felony-firearm conviction. Defendant appeals his convictions and sentences, and we affirm.

I. FACTS AND PROCEEDINGS BELOW

On February 28, 2001, the victim, Delrico Riggs, visited the home of Angela Harris. Erika Sutton, Harris' daughter, also lived in the house, and was present when Riggs visited. Sutton and Riggs began smoking marijuana together. A short time later, defendant arrived at Harris' home. Sutton testified that she and defendant had previously dated, but that the relationship had ended before the incident in question. Defendant lived down the street from the Harris residence at his grandparents' house.

Sutton testified that defendant had earlier told her that she should tell her mother (Harris) that Harris should not allow Riggs to visit anymore, to which Sutton responded that defendant had no business telling Sutton or Harris who should visit them. After defendant arrived at

[1] MCL 750.316

[2] MCL 750.227b

[3] MCL 750.317

Harris' home on February 28, 2001, he asked, "what the f--- do y'all have this n----- in y'all house for?" Once again, Sutton told defendant that he had no right to dictate who visited her or Harris. She then testified that defendant smiled, as though he was joking, and repeated his statement. She then said that defendant and Riggs "laughed it off," and "high-fived" one another. Sutton testified that Riggs and defendant were acquaintances who both sold drugs, and often "beeped" and phoned one another.

Thereafter, defendant went into the kitchen, removed his jacket, and asked to use the phone. Defendant phoned someone, and spoke for several minutes. After the call ended, he sat in the kitchen, and looked out the window for several minutes. Sutton asked defendant why he was looking out the window, to which defendant replied, "that's for me to know, and you to find out." He then told Sutton that he was going to the gas station to get some "blunts."[4] Defendant returned approximately five minutes later, and Riggs and Sutton were sitting together on a couch in Harris' living room, again smoking marijuana. Sutton testified that defendant asked for and took a couple of "hits" of the marijuana. He then went down the hall into the bathroom for several minutes. Sutton testified that defendant wore pants that made a "swooshing" noise when he walked, and that she heard what sounded like defendant walking quickly toward the living room. She saw defendant stand over Riggs with a "big, black gun." Defendant shot Riggs once, and Riggs cowered and exclaimed, "man, don't kill me, man!" Frightened, Sutton grabbed her mother's arm, and the two of them ran out of the house. Sutton testified that she heard several more gunshots after she and her mother fled the house.[5] Defendant ran out of Harris' house, and down the street toward his grandmother's house. Sutton went to the home of a neighbor and called 911. Some time later, after EMS had responded and taken Riggs' body away, Sutton gave a statement to the police. She told them that defendant had shot Riggs, and gave them a picture of defendant that defendant had given her, upon which was written, "To wiffie Ms. Erika Sutton from C-murder Mr. Crain. Love beyond a shadow for life."[6]

Trooper Harrison Cook of the Mississippi Highway Patrol testified that on September 24, 2002, about a year and a half after the murder of Riggs, he pulled over an eighteen-wheel tractor-trailer near Meridian, Mississippi, for a state law violation. He then testified that defendant was a passenger in that truck, and that the driver did not have permission from the trucking company to carry a passenger, as required by federal regulations. Cook spoke with the truck driver for several minutes. He then spoke to defendant, who gave Cook a false name, denied being wanted in Detroit or ever having been to Detroit, and failed to produce identification. Cook took defendant to the Meridian Police Department, where Cook ran a computer scan of defendant's fingerprints: defendant then told Cook his real name, and admitted he was wanted in Detroit.

II. ANALYSIS

[4] "Blunts" are cigars that are often hollowed out and filled with marijuana.

[5] Dr. Cheryl Loewe of the Wayne County Medical Examiner's office testified that Riggs died after sustaining nine gunshot wounds.

[6] C-murder was apparently defendant's nickname. Also, Sutton testified that there is a rap musician known as "C-murder."

A. Photograph of Defendant

Defendant asserts that the trial court committed reversible error by admitting into evidence the photograph Sutton gave to police with defendant's picture signed "C-murder." Defendant says that the photograph was not relevant, and if relevant, that it was unfairly prejudicial. Defendant argues that the words written on the photograph should have been redacted prior to its admission into evidence.

We review a trial court's decision to admit evidence for an abuse of discretion. *People v Ackerman*, 257 Mich App 434, 437; 669 NW2d 818 (2003). Evidence is relevant if it has "*any tendency*" to make a fact more or less probable than it would be without that evidence. *People v Hawkins*, 245 Mich App 439, 449; 628 NW2d 105 (2001), quoting MRE 401 (internal quotations omitted, emphasis added by this Court in *Hawkins*).

Here, the photograph was relevant to show that Sutton immediately identified defendant to the police as the person who shot Riggs. Moreover, the inscription on the photograph was relevant to show the strong feelings defendant had for Sutton, and to thus establish defendant's possible motive for shooting Riggs: jealousy. Clearly, evidence of a defendant's motive to commit a crime is relevant. *People v Sabin (After Remand)*, 463 Mich 43, 68; 614 NW2d 888 (2000).

MRE 403 bars the admission of relevant evidence if its probative value is substantially outweighed by its prejudicial effect. As this Court has noted in the past, by definition, all relevant evidence introduced against a defendant "is somewhat prejudicial to a defendant . . . ." *People v Maygar*, 250 Mich App 408, 416; 648 NW2d 215 (2002). Therefore, the question is not simply whether the evidence prejudices defendant but rather, whether the evidence is *unfairly* prejudicial. *Ackerman, supra* at 442. "Evidence is unfairly prejudicial when there exists a danger that marginally probative evidence will be given undue or preemptive weight by the jury." *Id.*, quoting *People v Ortiz*, 249 Mich App 297, 306; 642 NW2d 417 (2001), quoting *People v Crawford*, 458 Mich 376, 398; 582 NW2d 785 (1998) (internal quotations omitted). "The trial court is in the best position to gauge the effect of such testimony." *Id.*, citing *Maygar, supra* at 416.

Here, defendant says, unconvincingly, that the jury could interpret the fact that he signed the picture "C-murder" as an admission that he is, in fact, a murderer. Because the testimony reflects that C-murder, in addition to being defendant's nickname, was also the name of a rap musician, the inscription does not constitute an admission of murder. The fact that defendant was known as "C-murder" is simply relevant to show that he was the person who wrote the message inscribed on the photograph.

Therefore, we hold that the trial court did not abuse its discretion when it admitted the unredacted photograph of defendant.

B. Instruction on Flight

Defendant maintains that he was denied a fair trial when the trial court, over defendant's objection, gave the jury an instruction that evidence of flight may be considered as evidence of defendant's consciousness of guilt.[7]

Here, the evidence clearly supports the trial court's "flight instruction." Sutton testified that she saw defendant run away after he shot Riggs. Defendant was not apprehended until nineteen months later, in Meridian, Mississippi, where he gave a false name to Trooper Cook, denied being wanted by police in Detroit, and even denied having ever been to Detroit.

We hold that the trial court did not err in giving the flight instruction.

C. Second-Degree Murder Instruction

Defendant also argues that the trial court erred when it read the jury an instruction on second-degree murder, which was requested by the prosecution over defendant's objection. A requested instruction on a necessarily included offense must be supported by the evidence. *People v Cornell*, 466 Mich 335, 357; 646 NW2d 127 (2002). "[A]n instruction on second-degree murder, as a necessarily included offense of first-degree murder, is not automatically required." *Id.* at 358 n 13.

Here, the evidence supports a finding by a reasonable jury that defendant acted with premeditation, because defendant saw Sutton and Riggs together, became quiet and moody, and left Harris' house, only to return to shoot Riggs. However, the evidence also supports a finding by a reasonable jury that defendant acted suddenly and without deliberation or premeditation when he murdered Riggs because he was motivated by jealousy and anger when he saw his ex-girlfriend Sutton with Riggs despite his warnings to Sutton that she and Harris should keep Riggs away. Such a finding that defendant acted without premeditation would be supported in part by Sutton's testimony that defendant was joking with Riggs, and that he and Riggs "high-fived" one another shortly before defendant shot Riggs.

Therefore, we hold that the trial court properly gave the second-degree murder instruction to the jury.

D. Allocution

Defendant claims that the trial court denied him his right of allocution during his sentencing hearing, and that this requires resentencing. The defendant, during his remarks, stated that he did not commit the crime, and that he felt he was convicted only because his attorney did not adequately represent him. Defendant began to further explain himself on that point, when the trial court cut him off, and told him that he could take the matter up on appeal. Defendant replied okay, at which point the trial court repeated that he could take the matter up on

[7] We review claims of instructional error de novo, and examine the instructions in their entirety to determine whether the evidence supports the instructions given, and to ensure that the instructions do not exclude material issues, defenses and theories supported by the evidence. *People v Milton*, 257 Mich App 467, 475; 668 NW2d 387 (2003).

appeal, and then imposed sentence. Our court rules require only that a defendant be given the opportunity to speak at his sentencing. *People v Petit*, 466 Mich 624, 635-636; 648 NW2d 193 (2002), citing MCR 6.425(D)(2)(c). Here, defendant had that opportunity, and when the trial court realized that defendant was about to engage in a lengthy explanation of why he felt he was innocent, the trial court correctly informed him that he would have the opportunity to seek review on that basis on appeal. Therefore, we hold that defendant was not denied his right to allocute during sentencing.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Henry William Saad