

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAMAR CLARK,

Defendant-Appellant.

UNPUBLISHED

July 30, 1996

No. 185848

LC No. 94-002184

Before: Hood, P.J. and Griffin and J. F. Foley*, JJ.

PER CURIAM.

Defendant was charged with first-degree murder, MCL 750.316; MSA 28.548 and felony firearm, MCL 750.227b; MSA 24.424(2). He waived a jury, and was convicted in a bench trial of second degree murder, MCL 750.316; MSA 28.548 and the felony firearm. Defendant was sentenced to two years on the felony firearm conviction to be followed by twelve to twenty years for the second-degree murder conviction and appeals as of right. We affirm.

Defendant argues that the trial court erred as a matter of law by failing to consider duress as a defense to the second-degree murder charge. We disagree. Under the common law, duress was not a defense to homicide. *People v Dittis*, 157 Mich App 38, 40; 403 NW 2d 94 (1987). Michigan retains common law rules to the extent that those rules are not repugnant to the Constitution and are not modified by statute or Supreme Court ruling. *People v Aaron*, 409 Mich 672, 722; 299 NW 2d 304 (1980); *People v Duffield*, 387 Mich 300, 329; 197 NW 2d 25 (1972). The scope of the duress defense has not been extended to homicide by statute or Supreme Court decision. Therefore, the trial court did not err by finding that duress is not a defense to homicide.

Defendant also argues that the trial court should have considered duress as a defense to the felony firearm charge. Defendant did not request that the trial court consider this defense nor did he object to the trial court's failure to consider it. Therefore, this issue is not preserved for review on appeal. *City of Westland v Okopski*, 208 Mich App 66, 78; 527 NW 2d 780 (1994). Further,

failure to review this issue would not result in manifest injustice. Duress is only a defense to crimes including an intent requirement. See *People v Benevides*, 204 Mich App 188, 192; 514 NW 2d 208 (1994). Because felony firearm does not include an intent requirement, *People v Nix*, 165 Mich App 501, 505; 419 NW 2d 7 (1987), and because duress is not a defense to the underlying homicide, *People v Moseler*, 202 Mich App 296, 299; 508 NW 2d 192 (1993), duress was not a defense to felony firearm charge.

Defendant finally asserts that he was denied effective assistance by trial counsel's failure to raise duress as a defense to the second-degree murder and felony firearm charges. We disagree. Trial counsel does not err by failing to raise meritless issues. *People v Calhoun*, 178 Mich App 517, 524; 444 NW 2d 232 (1989). Because duress is not a defense to either charge, defendant was not denied effective assistance by trial counsel's failure to raise this defense.

Affirmed.

/s/ Harold Hood
/s/ Richard Allen Griffin
/s/ John F. Foley