STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERMAINE D. HILL,

Defendant-Appellant.

UNPUBLISHED
April 3, 1998

No. 200313
Recorder's Court
LC No. 95-013412

Before: Young, Jr., P.J., and Michael J. Kelly and Doctoroff, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions for first-degree murder, MCL 750.316(1)(a); MSA 28.548(1)(a); assault with intent to murder, MCL 750.83; MSA 28.278; and possession of a firearm during commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to life imprisonment without parole for the first-degree murder conviction, life imprisonment for the assault with intent to murder conviction and two years' imprisonment for the felony-firearm conviction. We affirm.

Defendant's first claim on appeal is that he was denied a fair trial when the trial judge refused to instruct the jury that he acted in self-defense to a sexual assault. We disagree. Defendant concedes that his trial counsel did not request sexual assault language in the self-defense instruction or object to the trial court's failure to include this language in the instruction. Hence, review is limited to the issue whether relief is necessary to avoid manifest injustice to defendant. *People v Haywood*, 209 Mich App 217, 230; 530 NW2d 497 (1995).

The trial judge instructed the jury to consider all the evidence and how the circumstances appeared to defendant at the time he acted in deciding whether defendant acted in lawful self-defense. This instruction did not prohibit the jurors from considering defendant's testimony regarding the threat of a sexual assault. Defendant testified that Venoy Lyons drove up to defendant, asked him if he fooled around, and offered him money for sex twice. Defendant testified that he started shooting when the Bronco swerved in front of him and he thought Lyons had something in his hand. Defendant made no statement in the record that he feared a forcible sexual penetration or sexual assault at the time of the

shooting. Under these circumstances, no reasonable juror could conclude that defendant's use of lethal force was necessary to prevent a sexual assault. Hence, defendant was not denied a fair trial by the trial court's failure to instruct the jury that defendant may have acted in self-defense to a sexual assault. *Haywood, supra* at 230.

Defendant next claims that the trial judge erred when she failed to instruct the jury on the lesser included offense of manslaughter. We disagree.

The trial judge's denial of a proper request for a jury instruction may be raised on appeal to determine whether sufficient evidence exists to support the instruction. *People v Hansma*, 84 Mich App 138, 146; 269 NW2d 504 (1978). To determine whether a trial judge erred in not instructing on the cognate lesser offense of voluntary manslaughter, the reviewing court must ascertain whether there was evidence presented at defendant's trial which would support a conviction of voluntary manslaughter. *People v Pouncey*, 437 Mich 382, 387; 471 NW2d 346 (1991).

Our review of the record reveals that defendant testified that the Bronco followed him and Abdul Reedus for fifteen to twenty-five minutes and that Venoy Lyons or Dexter West spoke with him from the Bronco six times. Defendant testified that he and Reedus walked away after each conversation. Although defendant testified that he was scared and nervous when the Bronco swerved towards him, he presented no evidence that he was provoked by Lyons' propositions or actions. Defendant testified that he fired five shots into the Bronco and then fired a sixth shot because he thought he might have missed somebody. Under these circumstances, the trial judge properly denied defendant's request for a voluntary manslaughter instruction because the evidence described a deliberate act without reference to impulse, frenzy or temporary excitement. *People v Younger*, 380 Mich 678, 681-682; 158 NW2d 493 (1968).

Defendant's final claim on appeal is that the prosecutor's rebuttal argument was improper, included a statement of the prosecutor's personal belief of guilt and denied defendant a fair trial. We disagree. Defendant concedes that he did not object to the prosecution's argument and that this issue is, therefore, unpreserved. See *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). In any event, the prosecution's rebuttal argument referred to the evidence, inferences from the evidence and defendant's closing argument. Because this was not a case where the prosecutor put the prestige of the office behind a personal belief in a witness' truthfulness, or conveyed to the jury that he had some special knowledge of facts indicating the witness' truthfulness, the prosecutor's remarks were not improper and did not result in a miscarriage of justice. *People v Bahoda*, 448 Mich 261, 276-277; 531 NW2d 659 (1995); *People v Cowell*, 44 Mich App 623, 628; 205 NW2d 600 (1973).

Affirmed.

/s/ Robert P. Young, Jr.
/s/ Michael J. Kelly
/s/ Martin M. Doctoroff