

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DON LYDELL BRYANT,

Defendant-Appellant.

UNPUBLISHED

May 12, 1998

No. 197048

Genesee Circuit Court

LC No. 95-053356 FC

Before: McDonald, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree murder, MCL 750 316(a); MSA 28.548(a). The trial court sentenced defendant to life imprisonment without parole. Defendant appeals as of right. We affirm.

Defendant argues the trial court abused its discretion in denying a defense motion in limine to bar admission of photographs of the victim's face and body. The photographs in question were not admitted as evidence and the jury never saw them. The prosecutor showed the pictures to the medical examiner and defendant to aid their testimony. Defendant concedes this, but argues reversal is required because the jury was somehow nonetheless inflamed by the photographs. Defendant has not cited any authority in support of his position. We decline to address whether the trial court abused its discretion in denying defendant's motion in limine because the pictures were not admitted into evidence and because defendant failed to cite authority in support of his position. *People v Piotrowski*, 211 Mich App 527, 530; 536 NW2d 293 (1995).

Next, defendant contends resentencing is required because the judgment of sentence indicates an illegal sentence of 999 years' imprisonment. Defendant's argument is without merit. The trial court filed an amended judgment of sentence that correctly reflects defendant was sentenced to life imprisonment.

Defendant also claims the trial court erred in denying his motion for a directed verdict because there was insufficient evidence of premeditation to sustain a first-degree murder conviction. We disagree. Here, the prosecutor presented ample evidence to permit a rational trier of fact to find beyond a reasonable doubt that defendant intentionally killed the victim and that the killing was

premeditated and deliberate. *People v Williams*, 212 Mich App 607, 608; 538 NW2d 89 (1995). Several witnesses at the trial testified that they saw defendant and Shanar Cole repeatedly hit and kick the victim while she was defenseless, drag her to the trash dumpster, jump on top of her, and tear off her clothes. There was also evidence that defendant and Cole beat the victim with a stick and stabbed her with a knife. Defendant and Cole stopped the attack on the victim and came inside several times, and then returned outside to continue beating the victim. This evidence alone indicates defendant had a sufficient amount of time to take a “second look” at what he was doing, which is sufficient to establish the element of premeditation and deliberation. *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995). Moreover, in light of the extent of the victim’s injuries and the circumstances of the killing, there was more than enough evidence to establish premeditation. Accordingly, the trial court did not abuse its discretion in denying defendant’s motion for a directed verdict.

Defendant further asserts the court erred in denying his motion for a mistrial. Defendant says a mistrial was warranted because the prosecutor made improper insinuations about defendant’s economic status while cross-examining him. We disagree. The prosecutor never asked defendant about his employment status or how he supported his children, and never made any comments about defendant’s economic status during closing argument. See *People v Johnson*, 393 Mich 488, 496-497; 227 NW2d 523 (1975). The prosecutor’s questions were properly responsive to defendant’s testimony on direct examination and did not deny defendant a fair trial. Accordingly, the trial court did not abuse its discretion in refusing to grant a mistrial on this basis. *People v Cunningham*, 215 Mich App 652, 654; 546 NW2d 715 (1996).

Additionally defendant says the trial court should have granted a mistrial based on improper comments the prosecutor made during closing argument. Specifically, defendant contends the prosecutor appealed to the jurors to sympathize with the victim, inflamed the jury by referring to defendant as “this man,” and made disparaging remarks about the lesser included offenses that the defense asked the trial court to include in the jury instructions. We find none of the alleged improper comments denied defendant a fair trial. *People v Paquette*, 214 Mich App 336, 342; 543 NW2d 342 (1996). Moreover, the trial court’s instructions to the jury that it must not allow sympathy or prejudice to influence its verdict and that the arguments of the lawyers are not evidence cured any possible prejudice. *People v Bahoda*, 448 Mich 261, 281; 531 NW2d 659 (1995). Accordingly, the trial court did not abuse its discretion in denying defendant’s motion for a mistrial on this basis. *Cunningham, supra* at 654.

Finally, defendant alleges the trial court erred in denying his motion to quash the information. Defendant contends the prosecution failed to prove premeditation at the preliminary examination. We disagree. We find the magistrate did not abuse its discretion in binding defendant over on the open murder charge because the prosecution presented ample evidence to establish probable cause that defendant intentionally killed the victim with premeditation and deliberation. *People v McBride*, 204 Mich App 678, 681; 516 NW2d 148 (1994).

Affirmed.

/s/ Gary R. McDonald
/s/ Henry William Saad
/s/ Michael R. Smolenski

