

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH T. HUEY,

Defendant-Appellant.

---

UNPUBLISHED

July 7, 1998

No. 198835

Oakland Circuit Court

LC No. 93-127490-FC

Before: Saad, P.J., and Wahls and Gage, JJ.

PER CURIAM.

The jury convicted defendant of first-degree premeditated murder, MCL 750.316; MSA 28.548, two counts of assault with intent to murder, MCL 750.83; MSA 28.178, three counts of felony-firearm, MCL 750.227b(a); MSA 28.424(2), and carrying a concealed weapon, MCL 750.227; MSA 28.424. The court sentenced defendant to life imprisonment without parole for the murder conviction, life imprisonment for each assault with intent to murder conviction, two years' imprisonment for each felony-firearm conviction, and three to five years' imprisonment for the CCW conviction. Defendant now appeals as of right. We affirm.

On appeal, defendant first challenges the trial court's recitation of the jury instructions pertaining to voluntary manslaughter and first-degree murder. Defendant claims that he was deprived of his right to have an adequately instructed jury decide the case when the trial court omitted two sentences from the standard first-degree murder instruction, and one sentence from the voluntary manslaughter instruction. We disagree.

Defendant did not object to the instructions when they were read to the jury. Therefore, this issue was not preserved for appeal. *People v Cousins*, 139 Mich App 583, 592; 363 NW2d 285 (1984). Absent an objection below, this Court is only required to review alleged instructional error to avoid manifest injustice. MCL 768.29; MSA 28.1052; *People v VanDorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993). We find that the jury instructions were not improper and that the trial court clearly and accurately informed the jury of the issues to be resolved. No error results from the omission of an instruction if the instructions as a whole cover the substance of the omitted instruction.

*People v Messenger*, 221 Mich App 171, 177-178; 561 NW2d 463 (1997). Here, the information in the omitted sentences was adequately covered by the rest of the instructions. Accordingly, defendant's rights were adequately protected and we find no manifest injustice.

Next, defendant argues that the prosecutor committed misconduct. Specifically, defendant challenges a question posed to him on cross-examination concerning the credibility of a prosecution witness. He also challenges a remark made by the prosecutor during his rebuttal argument. Defendant failed to preserve this issue for appeal because he failed to object at trial. Appellate review of allegedly improper remarks by the prosecutor is precluded if the defendant fails to timely and specifically object, unless an objection would not have cured the error or a failure to review the issue would result in a miscarriage of justice. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994).

Although we agree that the prosecutor's question to defendant concerning another witness' credibility, and the prosecutor's subsequent reference to his answer, were improper, the prejudicial effect of these remarks, if any, could have been cured by a timely instruction from the court. Additionally, we fail to see how these isolated remarks harmed defendant. Accordingly, we find no error requiring reversal. *People v Buckey*, 424 Mich 1, 16-18; 378 NW2d 432 (1985); *Messenger*, *supra* at 180.

Defendant makes an additional prosecutorial misconduct claim, arguing that the prosecutor improperly questioned him regarding his statement "I don't remember what I did with the gun. I was drunk." Defendant points out that the trial court had previously ruled this statement inadmissible. However, defendant fails to point out that the statement came in to rebut his testimony that he had not been drinking that night. Contrary to defendant's assertions, the trial court never ruled that the statement was inadmissible for impeachment purposes. Indeed, defendant has never argued, at trial or here, that the statement was actually inadmissible for impeachment purposes. Thus, this prosecutorial misconduct claim is utterly without merit.

Next, defendant claims that he was denied the effective assistance of counsel because his attorney failed to object to the jury instructions, and because his attorney failed to object to the prosecutor's questions and remarks discussed above. Defendant claims that these deficiencies deprived him of his Sixth Amendment right to counsel as well as his right to a fair trial. We disagree.

Defendant did not move for an evidentiary hearing below pursuant to *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973). Therefore, this issue was not preserved for appeal. Absent an evidentiary hearing, this Court will only review an ineffective assistance of counsel claim if the alleged deficiencies in counsel's performance are apparent from the record. *People v Oswald (After Remand)*, 188 Mich App 1, 13; 469 NW2d 306 (1991). Here, the record does not support defendant's claim that defense counsel was ineffective. The decisions whether to object to the prosecutor's remarks and the jury instructions were ones of trial strategy, which we will not second guess. Moreover, even had his attorney erred, defendant has failed to show that counsel's errors were so serious as to deprive him of a fair trial. See *People v Johnson*, 451 Mich 115, 121; 545 NW2d 637 (1996) (citing *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984)).

Next, defendant argues that his right to be free from double jeopardy was violated when he was convicted and sentenced on three counts of felony-firearm. Although defendant did not raise this issue below, we will address it because it involves an important constitutional claim. *People v Artman*, 218 Mich App 236, 244; 553 NW2d 673 (1996).

In light of the Supreme Court's decision in *People v Morton*, 423 Mich 650; 377 NW2d 798 (1985), defendant's argument is without merit. There, the Court found a clear legislative intent that "every felony committed by a person possessing a firearm result in a felony-firearm conviction." *Id.* at 656. The Court held that multiple felony-firearm convictions arising out of the same transaction did not violate double jeopardy. *Id.* at 655-656. Thus, defendant's multiple felony-firearm convictions and sentences do not violate double jeopardy. Moreover, defendant's multiple felony-firearm sentences do not increase his time of imprisonment because those sentences are to be served concurrently to one another, and consecutively to the underlying felonies. See *People v Sawyer*, 410 Mich 531, 534-535; 302 NW2d 534 (1981).

Finally, defendant argues that there was insufficient evidence to convict him of first-degree premeditated murder because the evidence presented at trial only established that, at most, defendant was guilty of manslaughter. We disagree.

When reviewing a claim of insufficient evidence in a jury trial, this Court must view the evidence in the light most favorable to the prosecution to determine whether a reasonable jury could find the elements of the crime were proven beyond a reasonable doubt. *People v Warren (After Remand)*, 200 Mich App 586, 588; 504 NW2d 907 (1993). In order to convict defendant of first-degree murder, the prosecution had to prove beyond a reasonable doubt that defendant intentionally killed the victim, and that the act of killing was willful, deliberate, and premeditated. MCL 750.316(1)(a); MSA 28.548(1)(a); *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995). The elements of premeditation and deliberation may be inferred from the circumstances surrounding the killing. *People v Schollaert*, 194 Mich App 158, 170; 486 NW2d 312 (1992).

Here, it was undisputed that defendant shot and killed one of the victims. Viewed in the light most favorable to the prosecution, additional evidence showed that defendant became angry at the victims as they were leaving a restaurant. After the victims left, defendant told a witness "I have something in the car for them." He then got in a car, chased down the victims, pulled out a gun, and fired directly at them from only a few feet away. We have no doubt that this evidence was sufficient to permit a reasonable jury to conclude that defendant was guilty of first-degree murder beyond a reasonable doubt.

Affirmed.

/s/ Henry William Saad  
/s/ Myron H. Wahls  
/s/ Hilda R. Gage