STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL TUDOR,

Defendant-Appellant.

UNPUBLISHED
February 1, 2002

No. 222684
Wayne Circuit Court
Criminal Division
LC No. 98-013581

Before: K.F. Kelly, P.J., and Hood and Doctoroff, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree murder, MCL 750.316, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to life imprisonment for the first-degree murder conviction and a consecutive two-year term for the felony-firearm conviction. He appeals as of right. We affirm.

Defendant first claims that the evidence at trial was insufficient to establish the premeditation element of first-degree murder. We disagree. To premeditate is to think about before hand. *People v Plummer*, 229 Mich App 293, 300; 581 NW2d 753 (1998). Here, evidence was introduced that defendant engaged in threatening conduct and words before the offense, acquired the gun, lured the victim away from the home of his ex-girlfriend while armed with the gun and under the pretext of wanting to talk to the victim, and shot the victim four times in the head while he was seated in the victim's car. Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a rational trier of fact to infer premeditation beyond a reasonable doubt. *Id*. at 299.

Defendant next claims that the trial court abused its discretion by allowing the prosecutor to introduce evidence of (1) his suicide attempt after his ex-girlfriend terminated their romantic relationship and (2) following his ex-girlfriend while she was a passenger in a vehicle driven by a male acquaintance. We note that the trial court considered MRE 404(b) when addressing the admissibility of this evidence, and are not persuaded that the trial court failed to articulate the basis for its decision. See *People v Lindberg*, 162 Mich App 226, 230-231; 412 NW2d 272 (1987).

Further, we find no abuse of discretion in the trial court's decision to allow the evidence. *People v Sabin (After Remand)*, 463 Mich 43, 55-56; 614 NW2d 888 (2000). As the trial court correctly observed, the evidence was relevant to show the nature of defendant's relationship with

his ex-girlfriend and, in particular, the intensity of his feelings towards her and their children. The evidence was probative of defendant's motive to kill a rival to that relationship. "A motive is the inducement for doing some act; it gives birth to its purpose." *Id*. at 68, quoting *People v Kuhn*, 232 Mich 310, 312; 205 NW 188 (1925). The fact that the suicide attempt occurred several months before the victim was killed affected only the weight of the evidence, not its admissibility. See *People v Fisher*, 449 Mich 441, 453; 537 NW2d 577 (1995). Further, the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. MRE 403; *Sabin, supra*.

Defendant next claims that the trial court erred by foreclosing the possibility of having testimony read to the jury during deliberations. The record discloses that defendant objected at trial only to the procedure used by the trial court to respond to the jury's request for the trial transcript. He did not object to the substance of the communication. An objection on one ground is insufficient to preserve an appellate attack on a different ground, and this issue is not preserved. *People v Maleski*, 220 Mich App 518, 523; 560 NW2d 71 (1996). Therefore, our review is limited to plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

The trial court accurately characterized the response to the jury's request for the trial transcript as an administrative communication. *People v France*, 436 Mich 138, 143; 461 NW2d 621 (1990). Having considered the jury's request for the trial transcript in light of the trial record, including the record regarding the substance of the administrative communication made by the deputy, we are unpersuaded that defendant established plain error because it is not clear that the possibility of having testimony read back at a later time was foreclosed. MCR 6.414(H).

Defendant next claims that the trial court erred by failing to suppress evidence of his statement to a police officer after he was arrested. We disagree. Giving deference to the trial court's superior opportunity to evaluate the credibility of the witnesses who testified at the suppression hearing, we find no error. *People v Sexton (After Remand)*, 461 Mich 746, 752-753; 609 NW2d 822 (2000).

Next, defendant challenges the trial court's decision to allow evidence of the victim's statements to police officers shortly after he was shot as a dying declaration under MRE 804(b)(2). We note that the pretrial motion on which the trial court based its ruling pertained only to the testimony of Officer Rukeya Quine concerning the victim's statement that he was shot by defendant, and that the trial court's ruling reflects three independent exceptions to the hearsay rule for allowing the testimony, i.e., a present sense impression, excited utterance, and dying declaration. Defendant addresses only the dying declaration exception on appeal. Because the trial court determined that the statements would be admissible under two other exceptions, defendant's failure to address those exceptions precludes appellate relief. See *Roberts & Son Contracting, Inc v North Oakland Development Corp*, 163 Mich App 109, 113; 413 NW2d 744 (1987). Further, we are satisfied that the trial court did not abuse its discretion in allowing Officer Quine's testimony under the hearsay exception for a dying declaration. *People v Siler*, 171 Mich App 246, 251-252; 429 NW2d 865 (1988).

Because defendant has not shown that Officer Michael Scanlon's testimony regarding the victim's statements to him were within the scope of his pretrial motion, we review this claim for plain error affecting defendant's substantial rights. *Carines, supra* at 763. Considering the

severity of the victim's gunshot wounds to the head and Officer Scanlon's testimony about the victim's repetitive statements that he was going to die, we find no plain error in allowing the testimony under MRE 804(b)(2).

Defendant also argues that he was deprived of a fair trial due to the prosecutor's misconduct in denigrating defense counsel, making appeals to instill sympathy for the victim and his family, and arguing facts not in evidence. In general, we review claims of prosecutorial misconduct de novo. *People v Pfaffle*, 246 Mich App 282, 288; 632 NW2d 162 (2001). We examine the challenged remarks in context to determine if defendant was denied a fair trial. *People v Bahoda*, 448 Mich 261, 266-267; 531 NW2d 659 (1995). However, unpreserved claims of prosecutorial misconduct are reviewed for plain error affecting defendant's substantial rights. *Carines, supra*; *People v Schutte*, 240 Mich App 713, 720; 613 NW2d 370 (2000). Having considered each of defendant's claims in light of the appropriate standard, we conclude that defendant has not established any error, singularly or cumulatively, and defendant was not denied a fair trial. *Bahoda, supra* at 292 n 64.

Finally, defendant seeks reversal on the basis of the cumulative effect of the errors claimed in this appeal. Because only actual errors are aggregated to determine the cumulative effect, *Bahoda, supra* at 292 n 64, and defendant failed to establish actual error, we find no basis for relief.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Harold Hood
/s/ Martin M. Doctoroff