STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 13, 2012
v	No. 306497 Wayne Circuit Court
GREGORY FRANKLIN HARRIS, Defendant-Appellant.	LC No. 11-001914-FC

Before: SAAD, P.J., and K. F. KELLY and M. J. KELLY, JJ.

PER CURIAM.

Defendant appeals his jury trial conviction of second-degree murder, MCL 750.317. The trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to 270 to 500 months in prison. For the reasons set forth below, we affirm.

Defendant contends that the prosecution presented insufficient evidence to support his second-degree murder conviction because evidence failed to show that he killed the blind victim, Zilphia Craig, or that he did so with malice.

"This Court reviews de novo defendant's challenge to the sufficiency of the evidence." *People v Meissner*, 294 Mich App 438, 452; 812 NW2d 37 (2011). "We view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime to have been proved beyond a reasonable doubt." *Id*.

The elements of second-degree murder are: "(1) death, (2) caused by defendant's act, (3) with malice, and (4) without justification." *People v Mendoza*, 468 Mich 527, 534; 664 NW2d 685 (2003). Stated simply, second-degree murder is "the unlawful killing of one human being by another with malice aforethought." *People v Goecke*, 457 Mich 442, 463; 579 NW2d 868 (1998). "Malice" includes the "intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and willful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm." *Id.* at 464. "The intent to do an act in obvious disregard of life-endangering consequences is a malicious intent," that does not require the defendant to actually intend the harmful result. *Id.* at 466. The intent to kill may be proven by inference from any facts in evidence. *People v Dumas*, 454 Mich 390, 403; 563 NW2d 31 (1997) (Opinion by Riley, J.). Furthermore, "[c]ircumstantial evidence and reasonable

inferences arising from the evidence may sufficiently prove the elements of a crime." *People v Bulls*, 262 Mich App 618, 624; 687 NW2d 159 (2004).

Evidence established that defendant killed Craig and that he did so with malice. Craig's body showed signs of blunt force trauma to the head. On the night of the murder, after defendant saw that Craig was unresponsive and had no heart beat, he did not call for help to save her, but went to Home Depot to buy bags and tape to wrap Craig's body. Defendant wrapped Craig in 17 layers of plastic to conceal the smell of decomposition. Defendant's brother, James Harris, testified that defendant told him that he killed Craig. Harris testified that defendant said he and Craig had a fight, defendant hit Craig, and that Craig fell and died after the fight. Thus, the jury heard evidence that defendant hit Craig and that he confessed to the killing. A rational jury could conclude from that evidence that defendant caused Craig's death. Further, a rational jury could have inferred that defendant's conduct in hitting Craig and his attempt to cover up and conceal Craig's body were clear signs that he both caused her death and that he acted with malice.

Defendant also contends that the trial court abused its discretion when it admitted Cleveland Hurd's testimony regarding a conversation he had with Craig at the "Normandy Hotel." Specifically, defendant argues that the testimony was hearsay. A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion. *People v Douglas*, 296 Mich App 186, 191; 817 NW2d 640 (2012). "An abuse of discretion occurs when the decision [of the trial court] results in an outcome falling outside the principled range of outcomes." *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). "When the trial court selects one of these principled outcomes, the trial court has not abused its discretion and, thus, it is proper for the reviewing court to defer to the trial court's judgment." *Id.*

We hold that defendant waived any error with regard to Hurd's testimony. Defense counsel asked the trial court to admit Hurd's written statement and then defense counsel called Hurd to testify at trial about out-of-court statements made to him by Craig. Hurd's written statement indicated that, sometime before Craig's murder, Hurd saw Craig lying on the floor of a landing between the third and fourth floors of the hotel. Defense counsel specifically asked Hurd if Craig told him that she fell and that she miscounted the steps. Hurd denied that Craig made those statements to him and, on cross-examination by the prosecutor, Hurd testified that Craig told him that defendant kicked her down the steps because she would not perform oral sex on him. While Hurd's statements arguably constitute hearsay pursuant to MRE 801(c), defense counsel waived any error because he specifically requested admission of the evidence and called Hurd as a witness to testify about Craig's statements. That this strategy backfired when Craig gave unfavorable testimony when the prosecutor pursued the same line of questioning initiated by defense counsel does not entitle defendant to relief. Indeed, defendant "invited the error" and his claim on appeal on this basis is waived. *People v Riley*, 465 Mich 442, 448; 636 NW2d 514 (2001).

Were we to find error in the admission of Hurd's testimony, we would nonetheless conclude that it was harmless. *People v Gursky*, 486 Mich 596, 620-621; 786 NW2d 579 (2010). Defendant has not shown that the admission was "so prejudicial as to require reversal." *Id.* at 599. Hurd's testimony was not presented as substantive proof of defendant's guilt and the jury

heard ample other evidence to support the verdict, including defendant's admission to his brother that he killed Craig. Therefore, the admission of Hurd's testimony would not require reversal.

Defendant also argues that the admission of the testimony violated his Sixth Amendment right to confront Craig. Because defendant did not object on this ground at trial, the issue is unpreserved. "Unpreserved claims of evidentiary error are reviewed for plain error affecting the defendant's substantial rights." *People v Benton*, 294 Mich App 191, 202; 817 NW2d 599 (2011). Here, no error occurred under the Confrontation Clause because Craig's statements were nontestimonial. When Craig made her statements to Hurd while lying on the floor of the hotel, Craig would not reasonably expect her statements to be used in a prosecutorial manner. Further, the statements were not made under circumstances that would cause an objective witness to reasonably believe that the statement would be available for use at a later trial. Because the statements were nontestimonial, the Confrontation Clause simply does not apply.

Affirmed.

/s/ Henry William Saad
/s/ Kirsten Frank Kelly
/s/ Michael J. Kelly