

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT MICHAEL RICHMOND,

Defendant-Appellant.

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UNPUBLISHED

June 18, 1996

No. 170338

LC No. 92-2466-FH

Before: Cavanagh, P.J. and Hood and J. J. McDonald\*, JJ

PER CURIAM.

Defendant was convicted by a jury of second-degree murder, MCL 750.317; MSA 28.549. He then pleaded guilty to being a second offense habitual offender, MCL 769.10; MSA 28.1082. He was sentenced to 22 to 45 years for the murder. That sentence was vacated, and he was sentenced to twenty-five to fifty years' imprisonment as an habitual offender. Defendant appeals as of right. We affirm.

Defendant's conviction arose from the stabbing death of Bruce Andrews in Andrews' apartment. Defendant essentially maintained at trial that the killing was done in self-defense to prevent Andrews from killing and/or sexually assaulting him.

Defendant first argues that there was insufficient evidence to support submission of the charge of first-degree premeditated and deliberated murder to the jury. Viewing the evidence in a light most favorable to the prosecution as required by *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, modified on other grounds 441 Mich 1201-1202 (1992), we disagree. Defendant gave several inconsistent statements to the police. He indicated in his second statement that, after Andrews ran to his bedroom, he followed and stabbed Andrews again more than once. Based on *People v Tilley*, 405 Mich 38; 273 NW2d 471 (1979), and *People v Morris*, 445 Mich 860 (1994) (summary reversal), this break in the conflict, after which defendant inflicted the final wounds on Andrews, was sufficient evidence to have supported a finding of premeditation and deliberation. Also, defendant's testimony at trial that he had been sexually penetrated by Andrews, while asleep or unconscious the prior day, and

\* Circuit judge, sitting on the Court of Appeals by assignment.

that Andrews had given him cocaine could be viewed as some evidence of a motive to kill for revenge and/or to obtain cocaine, further supporting a finding of premeditation. We find no error.

Next, defendant argues that the circuit court abused its discretion by admitting photographs and a videotape of the homicide scene. *People v Anderson*, 209 Mich App 527, 536; 531 NW2d 780 (1995), and *People v Barker*, 179 Mich App 702, 710; 446 NW2d 549 (1989), aff'd on other grounds 437 Mich 161; 468 NW2d 492 (1991) (introduction of photographic and videotape evidence reviewed for abuse of discretion). Photographs are not inadmissible merely because they vividly depict gruesome details of an alleged crime. *People v Eddington*, 387 Mich 551, 562-563; 198 NW2d 297 (1972). Particularly since defendant was the only living eyewitness to the incident, it was important for the jury to know the extent and nature of the injuries suffered by Andrews. Cf. *People v Mills*, 450 Mich 61, 79; 537 NW2d 909 (1995). Physical evidence of the wounds inflicted and the crime scene held significant probative value in establishing the nature of the struggle between defendant and Andrews and defendant's state of mind with regard to premeditation and his claim of self-defense. Notably, the circuit court excluded certain photographs as too gruesome. Also, it was reasonable to conclude that the photographs and the videotape had independent probative value because they provided different views of the homicide scene. Accordingly, it was not an abuse of discretion to admit both types of evidence.

Lastly, defendant challenges certain prosecutorial remarks. Because he did not object below, review is precluded unless a curative instruction could not have eliminated any prejudicial effect or failure to consider the issue would result in a miscarriage of justice. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). Regardless, the remarks at issue were proper. We note that prosecutors are generally accorded great latitude regarding their arguments, *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995), and are not required to state those arguments "in the blandest possible terms." *People v Pawlczakz*, 125 Mich App 231, 238; 336 NW2d 453 (1983). In light of defense attacks on Andrews and the police investigation of this case, the prosecutor's comments that he was also acting as a defense attorney for Andrews and the Sterling Heights police were proper as they tended to refocus the jury's attention on the central matter of whether defendant was guilty of a homicide offense. The prosecutor's remarks about the law protecting every individual were not improper civic duty arguments that improperly injected issues broader than defendant's guilt or innocence, *People v Wright (On Remand)*, 99 Mich App 801, 809; 298 NW2d 857 (1980). Rather, those comments called on the jury to properly exercise its factfinding responsibilities without regard to negative feelings that they might have toward Andrews because of his questionable character and use of illegal drugs to obtain sexual partners or, conceivably, due to bias based on his sexual orientation. Prosecutorial arguments are considered in light of defense arguments. *People v Spivey*, 202 Mich App 719, 723; 509 NW2d 908 (1993). Accordingly, the prosecutor's argument that one cannot kill someone and then try to excuse it because of the victim was a proper response to attacks on Andrews during the defense closing argument. Finally, the prosecutor's comments about defendant's assertion that he had been sexually penetrated by Andrews the day before the incident accurately summarized the law, recognizing a right to use deadly force in self-defense if necessary to *repel* an attempted forcible sexual penetration, *People v Barker*, 437 Mich 161, 163; 468 NW2d 492 (1991), but not to kill

where one does not at the time have a reasonable apprehension of death or serious bodily harm. *See, e.g., People v Fortson*, 202 Mich App 13, 19-20; 507 NW2d 763 (1993).

Affirmed.

/s/ Mark J. Cavanagh

/s/ Harold Hood

/s/ John J. McDonald