

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERMEL DARNELL JOHNSON,

Defendant-Appellant.

UNPUBLISHED

July 19, 1996

No. 178466

LC No. 93007670 FC

Before: Marilyn Kelly, P.J., and Neff and J. Stempien,* JJ.

PER CURIAM.

A jury convicted defendant of first-degree premeditated murder, MCL 750.316; MSA 28.548. He was sentenced to natural life. He appeals of right. We affirm.

Defendant argues that there was insufficient evidence of premeditation to support the first-degree murder charge. Although the evidence against defendant was not overwhelming, it was sufficient to allow a rational trier of fact to find that the prosecutor had proved the essential elements of first-degree premeditated murder beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), modified 441 Mich 1201 (1992). The victim was manually strangled and had defensive wounds on her body, indicating a struggle, which would have provided defendant some opportunity for reflection. *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995). In addition, defendant apparently formed the plan to gain entry to the lounge to attempt a sexual assault. Forming such a plan required forethought. There was evidence that he was looking for the victim before the killing, another indicator of premeditation. The body was found in the back room of the staff lounge, meaning defendant had to first pass through the front room before the murder, allowing him time for reflection. Defendant's post-killing conduct also inferred premeditation to some degree. *Id.*

Defendant argues that the exclusion of hearsay testimony that the victim had expressed fears of other residents and staff members was an abuse of the trial court's discretion. Defendant argues that the evidence was admissible under MRE 803(3) as an exception to the hearsay exclusion rule, because it showed the victim's state of mind. The victim's state of mind was not in issue and, therefore, not

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

relevant. *People v Furman*, 158 Mich App 302, 315; 404 NW2d 246 (1987). Defendant argues that the victim's stated fears would have made her reluctant to open the door to defendant. However, because her statements did not refer directly to defendant, they did not make it more or less likely that defendant gained access to the room. MRE 401; *People v Mills*, 450 Mich 61, 66-68 4; 537 NW2d 909 (1995), modified on other grounds 450 Mich 1212 (1995). Because the evidence was not material to any fact of consequence, the trial court did not abuse its discretion by refusing to admit it.

Affirmed.

/s/ Marilyn Kelly

/s/ Janet T. Neff

/s/ Jeanne Stempien