

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT MITCHELL,

Defendant-Appellant.

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UNPUBLISHED

November 26, 1996

No. 184472

LC No. 94-001794

Before: Hoekstra, P.J., and Sawyer and T.P. Pickard,\* JJ.

PER CURIAM.

Defendant, Robert Mitchell, was convicted of first-degree premeditated murder, MCL 750.316; MSA 28.548, in the stabbing death of his girlfriend Ruth Faye Roebuck. Following his bench trial, defendant was sentenced to life imprisonment without parole. Defendant appeals his conviction by right. We affirm.

Defendant raises three issues on appeal. First, defendant argues that the trial court's findings of fact as to the premeditation and deliberation element of first-degree murder were clearly erroneous. We disagree. In order for a killing to be premeditated and deliberate, defendant must have thought about the killing before hand and "considered the pros and cons of the killing and thought about and chose [his] actions before he did it." CJI2d 16.1(4), (5). All that is necessary to establish premeditation and deliberation is enough time for defendant to take a second look at his contemplated actions. *People v DeLisle*, 202 Mich App 658, 660; 509 NW2d 885 (1993). Thus, there must be "some time span between the initial homicidal intent and the ultimate action." *People v Waters*, 118 Mich App 176, 186; 324 NW2d 564 (1982). Pursuant to Michigan law, premeditation and deliberation can be inferred from the surrounding circumstances. See *DeLisle*, *supra* at 660; *Waters*, *supra* at 186.

Given the facts and circumstances of this case, we find that the evidence supports an inference that defendant's actions were premeditated and deliberate. Defendant, who had been dating Ruth Roebuck since 1991, had a prior relationship with the decedent. Moreover, Ronald Roebuck's testimony establishes that there was a time lapse between when defendant pulled the knife and when he

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

stabbed Ruth Roebuck. This lapse afforded defendant a sufficient amount of time during which he could have taken a second look at his intended course of action. See *Waters, supra* at 187.

Defendant argues, however, that at the time of the killing, his actions were the result of emotion or passion; thus, the evidence more clearly establishes the lesser included offense of voluntary manslaughter. We disagree. There are three essential elements of voluntary manslaughter: (1) defendant must kill in the heat of passion, (2) the passion must be caused by an adequate provocation, and (3) there must not have been a lapse of time during which a reasonable person could control his passion. *People v Pouncey*, 437 Mich 382, 388; 471 NW2d 346 (1991). Adequate provocation is defined as provocation “which would cause the reasonable man to lose control.” *Id.* at 389. The evidence presented in this case does not establish a situation which would cause an ordinary man to lose control. Although defendant did find his girl friend alone with her ex-husband, Ronald Roebuck, Ronald Roebuck was merely fixing a curtain rod. Moreover, the evidence indicates that Ronald Roebuck regularly visited his ex-wife and that defendant never objected to these visits. Therefore, we find that the trial court’s finding of premeditation and deliberation was not clearly erroneous.

Next, defendant argues that the trial court erred in allowing two unsequestered witnesses, Pullum and Wasiak, to testify. We disagree. Pursuant to Michigan law, “one of the purposes of the sequestration of a witness is to prevent him from ‘coloring’ his testimony to conform with the testimony of another.” *People v Stanley*, 71 Mich App 56, 61; 246 NW2d 418 (1976). The only testimony which Pullum and Wasiak heard prior to being sequestered was that of Ronald Roebuck. Because Ronald Roebuck testified primarily as to the events which occurred inside Ruth Roebuck’s apartment and Pullum and Wasiak both testified exclusively as to the events which occurred outside the apartment, the risk that Pullum and Wasiak’s testimony would be colored by Ronald Roebuck’s testimony was minimal. Therefore, we find that there was no manifest injustice in the trial court’s admission of the unobjected to testimony of these two unsequestered witnesses.

Lastly, defendant argues that he was denied effective assistance of counsel by his trial counsel’s failure to pursue an intoxication and insanity defense on defendant’s behalf. We disagree. Michigan law recognizes a strong presumption that the assistance received from counsel was sound. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). In order to overcome this presumption, defendant must show that counsel’s performance was deficient and that the deficiency resulted in an unfair trial. *People v LaVearn*, 448 Mich 207, 213; 528 NW2d 721 (1995). Although “[a] defendant is entitled to have his counsel investigate, prepare and assert all substantial defenses,” *People v Hubbard*, 156 Mich App 712, 714; 402 NW2d 79 (1986), the failure to bring a defense will not support an ineffective assistance of counsel claim where there is no evidence to support the alleged defense. *People v Emerson (After Remand)*, 203 Mich App 345, 349; 512 NW2d 3 (1994). After carefully reviewing the record, we conclude that none of the evidence presented at trial supports a voluntary intoxication or an insanity defense as to the defendant in this matter.

“Voluntary intoxication is a defense to first-degree premeditated murder if a showing is made that the [defendant’s] intoxication prevented him from premeditating or deliberating.” *People v LaVearn*, 201 Mich App 679, 684; 506 NW2d 909 (1993), *rev’d on other grounds* 448 Mich 207;

528 NW2d 721 (1995). There was no evidence presented at trial to establish that defendant consumed any drugs or alcohol on the day of the crime and the testimony of Officer Salisbury establishes there was nothing in defendant's demeanor which suggested that he was under the influence of drugs or alcohol on the day in question. Thus, the evidence presented at trial does not establish that defendant was intoxicated in any capacity.

Similarly, there was no evidence to establish an insanity defense. In order to establish the defense of insanity, defendant must be found to have been legally insane and that as a result, he lacked "the substantial ability to appreciate the nature and quality or the wrongness of his conduct or to conform his conduct to the requirements of the law." CJI2d 7.11(9) Although Michigan law recognizes that "[a] person can become legally insane by the voluntary, continued use of mind-altering substances like alcohol or drugs *if their use results in a settled condition of insanity before, during, and after the alleged offense,*" see CJI2d 7.10(3) (emphasis added), there was no evidence presented to suggest that defendant's admitted drug use was continuous or caused a settled condition of insanity. Moreover, there was also no evidence that defendant was unable to appreciate the wrongfulness of his conduct. Because there was no evidence to support either an intoxication or an insanity defense, defendant was not denied effective assistance of counsel by his trial counsel's failure to raise these defenses at trial.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ David H. Sawyer  
/s/ Timothy P. Pickard