STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIE DEWAN DEBARDELABEN,

Defendant-Appellant.

UNPUBLISHED
January 31, 1997

No. 182071
Saginaw Circuit Court
LC No. 94-009603

Before: Taylor, P.J., and Gribbs and R. D. Gotham,* JJ.

PER CURIAM.

Defendant was convicted of second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to thirty to sixty years' imprisonment on the murder conviction, consecutive to a two-year sentence for felony-firearm. The convictions arose from the shooting of Jesse James Murray in Saginaw. Defendant appeals by right. We affirm.

The jury in this case was afforded the option of finding defendant guilty of first-degree premeditated murder, second-degree murder or not guilty. Defendant argues that his second-degree murder conviction should be reversed because there was insufficient evidence to submit the first-degree premeditated murder charge to the jury and that submission of the first-degree charge may have resulted in the second-degree conviction as a compromise verdict. Although defendant did not move for a directed verdict below, an insufficiency of the evidence claim may be raised on appeal in a criminal case. *People v Patterson*, 428 Mich 502, 514-515; 410 NW2d 733 (1987). In reviewing the sufficiency of the evidence, we view the evidence in the light most favorable to the prosecution. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, modified 441 Mich 1201-1202 (1992). To establish first-degree premeditated murder, the prosecution must prove an intentional killing and that the act of killing was premeditated and deliberate. *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995). This requires sufficient time "to take a second look." *Id.*

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

In this case, we find there was sufficient evidence from which the jury could infer that defendant had sufficient time for reflection before the shooting. Defendant bragged to his friends about the shooting, and was carrying a "big wad" of money. Most significantly, the decedent was killed by a single shot to the left temple, reminiscent of an execution style murder. The evidence suggests that the killing may have been planned in advance, that it was not committed in haste, and that it was done without a struggle. There was enough evidence to permit a reasonable jury to conclude that defendant was guilty of first-degree murder.

Nor did the trial court err by failing to sua sponte instruct the jury on voluntary manslaughter, *People v Beach*, 429 Mich 450, 482-483; 418 NW2d 861 (1988); *People v Jenkins*, 395 Mich 440, 441-442; 236 NW2d 503 (1975) or self-defense, *People v Mills*, 450 Mich 61, 80-81; 537 NW2d 909 (1995), modified on oth grounds, 450 Mich 1212 (1995).

Defendant also contends that trial counsel denied him effective assistance of counsel by failing to request jury instructions on manslaughter, imperfect self-defense and self-defense. In *People v Armstrong*, 124 Mich App 766, 769; 335 NW2d 687 (1983), this Court determined that "defense counsel's decision not to request lesser included offense instructions [was] a matter of trial strategy." In this case, the only record evidence having an imaginable tendency to support a conviction of the lesser offense of manslaughter or acquittal based on self-defense was testimony from two prosecution witnesses that defendant said that the person he shot swung at him with a bottle. However, a police officer testified that she found no bottle or broken glass that may have been from a bottle at the scene of the shooting. Counsel could reasonably have determined that there was, at best, flimsy evidence on which to base an argument for self-defense or conviction of the lesser offense of manslaughter and that pursuing such an argument would have distracted the jury's attention from his attack on the credibility of prosecution witnesses. *People v Rone (On Second Remand)*, 109 Mich App 702, 717-718; 311 NW2d 835 (1981). Thus, defendant has not established ineffective assistance because he has not shown that counsel's performance fell below an objective standard of reasonableness. *People v Pickens*, 446 Mich 298, 302-303, 314; 521 NW2d 797 (1994).

Affirmed.

/s/ Clifford W. Taylor
/s/ Roman S. Gribbs
/s/ Roy D. Gotham