

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

HAROLD DAVID BLOOM,

Defendant-Appellant.

UNPUBLISHED

March 4, 2003

No. 233864

Oakland Circuit Court

LC No. 2000-172749-FC

Before: Jansen, P.J., and Hoekstra and Gage, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree premeditated murder, MCL 750.316, and was sentenced to life in prison. He appeals as of right. We affirm.

The prosecution's theory alleged that Susan Disner was brutally stabbed to death by defendant, her brother. The prosecution asserted that the repeated stabbings were premeditated with the intent to kill Disner, and that defendant was not insane when he committed the crime. Defendant, on the other hand, alleged that he was legally insane at the time of the murder, and that "voices" in his head told him to murder his sister. Moreover, defendant insisted that the murder was not premeditated or deliberated.

On appeal, defendant argues that the prosecution failed to prove, beyond a reasonable doubt, that defendant deliberated and premeditated the murder. Accordingly, defendant argues that the first-degree murder conviction must be reduced to second-degree.

When reviewing a sufficiency of the evidence challenge, this Court reviews the evidence in the light most favorable to the prosecution in order to determine whether a rational trier of fact could conclude that the elements of the crime were proven beyond a reasonable doubt. *People v Head*, 211 Mich App 205, 210; 535 NW2d 563 (1995). This standard of review is deferential and a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict. It is for the trier of fact rather than this Court to determine what inferences can be fairly drawn from the evidence and to determine the weight to be accorded to the inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). Intent and premeditation may be inferred from all the facts and circumstances, *People v Safiedine*, 163 Mich App 25, 29; 414 NW2d 143 (1987), and because of the difficulty of proving an actor's state of mind, minimum circumstantial evidence is sufficient, *People v Bowers*, 136 Mich App

284, 297; 356 NW2d 618 (1984). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

To support a conviction for first-degree premeditated murder, it is necessary for the prosecution to prove, beyond a reasonable doubt, that the killing was deliberate and premeditated. *People v Wofford*, 196 Mich App 275, 279; 492 NW2d 747 (1992). To premeditate is to think about beforehand; to deliberate is to measure and evaluate the major facets of a choice. *People v Waters*, 118 Mich App 176, 184; 324 NW2d 564 (1982). Premeditation and deliberation characterize a thought process undisturbed by “hot blood.” *People v Hamm*, 120 Mich App 388, 392; 328 NW2d 51 (1982). Premeditation requires a sufficient amount of time to allow the defendant to take a second look, and can be inferred from the circumstances of the killing. *People v Coy*, 243 Mich App 283, 316; 620 NW2d 888 (2000). This Court has stated that the time lapse may be seconds, minutes, or hours, depending on the totality of the circumstances surrounding the killing. *People v Conklin*, 118 Mich App 90, 93; 324 NW2d 537 (1982).

Factors that can be considered to establish premeditation include the prior relationship between the parties, defensive wounds suffered by the victim, and the weapon used and location of the wounds. *Coy*, *supra* at 316. A defendant’s actions before the killing, as well as his attempts to conceal his involvement in the killing, can also be considered. *People v Furman*, 158 Mich App 302, 308; 404 NW2d 246 (1987).

Defendant’s neighbor testified to having heard a fight in progress in defendant’s apartment at the time of the murder, and to having heard a woman scream for help. The neighbor also testified that the attack lasted between 1½ to 2 minutes. This supports the conclusion that defendant did not instantly or impulsively attack the victim, or inflict the deadly wounds within only seconds. Further, a reasonable jury could find that there was sufficient time for defendant to have premeditated and deliberated the nature of his actions.

It is also undisputed that Disner received eleven stab wounds to vital organs, including two wounds to the heart and eight to the liver. The locations of the wounds indicate that the stabbings were directed at causing death. Further, the existence of eleven stab wounds supports the conclusion that defendant had time in between each stabbing to contemplate his actions. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001); *Waters*, *supra* at 178.

Moreover, there is undisputed evidence concerning the existence of defensive wounds on the victim. Defensive wounds tend to indicate a struggle, which could provide defendant with an opportunity for reflection. *People v Johnson*, 460 Mich 720, 730; 597 NW2d 73 (1999). Further, the record in this case shows that defendant also incurred a wound during the commission of the crime, supporting the determination that a struggle ensued, that it took a concerted effort to effectuate the murder, and that the killing was not just a fleeting impulse. Evidence also indicates that while defendant tended to his own injuries after the stabbing, he never attempted to aid Disner, which is also indicative of deliberation.

Evidence indicates that a police officer on the scene found the murder weapon, a double-edged knife, washed and hidden under defendant’s bed. Furthermore, it was established that defendant had anticipated fleeing the scene, and that he had \$1,800 in cash in his wallet in

contemplation of such action. These are all actions that could lead a reasonable jury to conclude that defendant was attempting flight, and made at least some attempt to cover up the homicide.

Finally, we note defendant's contention that a "psychotic episode" interfered with his ability to have premeditated the crime. However, defendant's mental illness, short of insanity, cannot be used to reduce his legal culpability. *People v Carpenter*, 464 Mich 223; 627 NW2d 276 (2001). Here, the jury concluded that at the time of defendant's actions, he was not insane, which is supported by the testimony of defendant's social worker and psychiatrist. As our Supreme Court in *Carpenter* stated, "[t]he Legislature has signified its intent not to allow evidence of a defendant's lack of mental capacity short of legal insanity to avoid or reduce criminal responsibility by negating specific intent." *Id.* at 227.

There was significant evidence on the record from which a reasonable jury could infer a deliberate and preconceived plan to kill. Accordingly, when viewing the facts in the light most favorable to the prosecution, there was sufficient evidence on the record to support the jury's verdict.

Defendant also argues that the verdict is against the great weight of the evidence. Following remand to the trial court for defendant's motion for new trial, the trial court denied the motion, finding the verdict is not against the great weight of the evidence.¹ It is in the trial court's discretion to grant or deny a motion for new trial and this Court reviews the trial court's decision for an abuse of discretion. *People v Daoust*, 228 Mich App 1, 16; 577 NW2d 179 (1998). An abuse of discretion exists when the trial court's denial of the motion was manifestly against the clear weight of the evidence. *Id.*

The test for determining whether a verdict is against the great weight of the evidence is whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998). If there is conflicting evidence, the question of credibility should ordinarily be left for the factfinder. *Id.* If the evidence is nearly balanced, or is such that different minds would naturally and fairly come to different conclusions, the judge may not disturb the jury findings even though his judgment might incline him the other way. *People v Stiller*, 242 Mich App 38, 52; 617 NW2d 697 (2000), citing *Lemmon*, *supra* at 644. Among the limited circumstances where a new trial can be granted on the basis that the verdict was against the great weight of the evidence include: where testimony was in direct conflict and testimony supporting the verdict has been so impeached that it was deprived of all probative value; where testimony was potently incredible or defies physical realities; or where a witness' testimony was seriously impeached and the case marked by uncertainties and discrepancies, so that there was a real concern that an innocent person was convicted. *Lemmon*, *supra*.

Much of defendant's argument has already been discussed. We find that nearly the same reasons that support the finding that there was sufficient evidence to convict defendant of first-

¹ Following defendant's filing of the instant appeal, defendant filed a motion to remand to allow him to file a motion for new trial. This Court granted the motion to remand by way of order entered May 20, 2002.

degree murder, also support a finding that the verdict is not against the great weight of the evidence because the evidence produced does not preponderate heavily against the verdict. However, defendant also contends that the evidence highly preponderates against a finding that defendant was not criminally insane at the time of the murder.

First, with regard to motive, although evidence was produced indicating that defendant had a close relationship with his sister, testimony established that Disner contemplated hospitalizing defendant on the day of the incident. Based on this evidence, the trial court properly found that it was reasonable for the jury to infer that the threat of commitment was defendant's motive or premeditation to murder his sister.

Next, several expert witnesses testified with regard to defendant's state of mind at the time of the murder. Two forensic psychologists testified that after the murder, defendant told them that he had heard voices. Both concluded that defendant was legally insane at the time of the murder. A third forensic psychologist testified that although he could not completely rule out insanity, he concluded that defendant was mentally ill, but not insane at the time of the murder. His conclusion was based in part on the fact that although the voices told defendant to "get rid of [Disner]," they did not specifically tell defendant to pick up the knife, as well as the expert's opinion that defendant's conduct indicated that he was capable of making decisions and was essentially under his own control.

Defendant's social worker testified that she worked with defendant for the year and a half before the murder and that she did not report any signs of schizophrenia in defendant's case. She testified that defendant never spoke of delusions or hallucinations, and she ultimately determined that defendant "had some depression, some sleep problems, but probably did not have a chronic and persistent mental illness." Defendant's treating psychiatrist for the year and a half before the murder testified that she had not seen any evidence of defendant hearing voices. Ultimately, she stated that she did not see major psychiatric symptoms of any kind and that defendant was one or her more stable patients.

Viewing the evidence in its entirety, we cannot say that the trial court abused its discretion in denying defendant's motion for a new trial. Although the experts opinions differed with regard to whether defendant was insane at the time of the murder, none of the testimony was potently incredible nor was it so impeached that it was deprived of all probative value. Moreover, evidence of defendant's actions during and after the murder, as well as his conduct with the police officers, suggest he was aware of his actions. Here, the evidence supported the jury's finding that defendant was not insane at the time of the murder.

Considering the evidence and testimony presented at trial, the jury could reasonably find that defendant premeditated and deliberated the murder. Therefore, the trial court did not abuse its discretion in denying defendant's motion for new trial.

Affirmed.

/s/ Kathleen Jansen
/s/ Joel P. Hoekstra
/s/ Hilda R. Gage