

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWARD JOHNIGAN,

Defendant-Appellant.

UNPUBLISHED

April 11, 2006

No. 258961

Kent Circuit Court

LC No. 03-007770-FC

Before: Kelly, P.J., and Jansen and Talbot, JJ.

MEMORANDUM.

Defendant appeals as of right his jury trial convictions for first-degree murder, under dual theories of premeditation and felony murder, MCL 750.316(1)(a) and (b), and possession of a firearm during the commission of a felony, MCL 750.227b. We affirm.

Defendant first argues, on appeal, that his conviction must be reversed because he was not charged with the underlying felony of armed robbery thereby violating his due process rights. Defendant has failed to cite any supporting authority for his argument and the issue is therefore abandoned. *People v Harris*, 261 Mich App 44, 50; 680 NW2d 17 (2004). Nevertheless, defendant's argument is without merit because the elements of armed robbery are necessary elements of felony murder. MCL 750.316(1)(b). Therefore, a separate charge of armed robbery was not required.

Defendant next argues that there was insufficient evidence of premeditation and deliberation presented at trial and, thus, his conviction should be reversed. We disagree. Defendant was convicted under two theories of first-degree murder, premeditation and felony murder. Therefore, a vacation of his conviction under the theory of premeditation leaves his conviction under the felony murder theory. Consequently, defendant's issue is moot. *In re Contempt of Dudzinski*, 257 Mich App 96, 112; 667 NW2d 68 (2003). Nevertheless, sufficient evidence of premeditation was presented at trial.

Reviewing the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found all of the elements of the offense proven beyond a reasonable doubt, *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992), sufficient evidence of premeditation and deliberation were shown. There was sufficient time between the initial thought and ultimate action to have afforded defendant time to take a "second look." *People v Tilley*, 405 Mich 38, 45; 273 NW2d 471 (1979). The victim was

restrained with duct tape before being shot twelve times at close range. There was sufficient time, at least sometime between the first shot and the twelfth, if not while taping the victim up, for defendant to take a “second look.” As defendant, himself, noted in his appellate brief, “A more rational view of the evidence suggested deceased was bound during a robbery. He was shot as an after thought [sic] because he had known who his captor was.” That afterthought occurred before the victim was shot, and clearly demonstrates premeditation.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Kathleen Jansen

/s/ Michael J. Talbot