

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY VAUGHN BROWNELL,

Defendant-Appellant.

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UNPUBLISHED

June 16, 2009

No. 283540

Calhoun Circuit Court

LC No. 2007-000709-FC

Before: Fort Hood, P.J., and Cavanagh and K.F. Kelly, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for two counts of first-degree murder, MCL 750.316,<sup>1</sup> first-degree home invasion, MCL 750.110a(2), third-degree fleeing and eluding, MCL 257.602a(3)(b), and four counts of possession of a firearm during the commission of a felony, MCL 750.227b. We affirm.

Defendant's convictions arise from the murders of his ex-wife and her boyfriend. Despondent after being unable to visit with his children, defendant drove to the residence of his ex-wife with a shotgun. His teenage daughter saw defendant drive by the front of the home on three occasions before speaking with his daughter. After the conversation, defendant floored his vehicle up the driveway. He exited the vehicle with a shotgun, cocked it, racked it, and aimed it at his daughter. She fled into the home and warned her mother who told her to call 911. Unable to dial the telephone, the daughter fled to the home of a neighbor. As she ran, she heard gunshots. When police arrived at the home, defendant's ex-wife and her boyfriend were found shot to death.

Defendant fled the home in his vehicle. He telephoned various relatives, admitted to committing the murders, and threatened to kill himself. Police pursued defendant through residential streets into a local cemetery where he shot himself before his apprehension.

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<sup>1</sup> Defendant was charged with open murder, but prosecuted under alternative theories of first-degree premeditated murder, MCL 750.316(1)(a), and felony-murder, MCL 750.316(1)(b). Although the jury convicted defendant under both theories, at sentencing, it was clarified that the sentence should reflect first-degree murder supported by two theories. See *People v Williams*, 475 Mich 101, 103; 715 NW2d 24 (2006).

During deliberations, the jury sent the following question to the trial judge, “Is premeditation days [sic] only at the onset of a crime or can the crime be in process, then premeditation come[s] into play[?]” Over defense counsel’s objection, the trial court instructed the jury, “Yes, premeditation could be formulated in one’s mind in the process of the criminal transaction or at the onset.” Defense counsel recommended that the trial court simply re-read the first-degree premeditated murder instruction. Counsel objected to the court’s expansion of the jury instruction “by adding a definition or adding a clarification to which may not have been meant.”

Defendant argues that the trial court failed to properly instruct the jury regarding the element of premeditation.<sup>2</sup> We disagree.

To convict a defendant of first-degree murder, the prosecutor must prove that the defendant intentionally killed the victim and that the killing was premeditated and deliberate. *People v Marsack*, 231 Mich App 364, 370; 586 NW2d 234 (1998). “Premeditation and deliberation require sufficient time to allow the defendant to take a second look.” *Id.* at 370-371. Proof of the elements may be satisfied by circumstantial evidence and reasonable inferences drawn from the evidence. *Id.* at 371. A specific time requirement is not imposed. *People v Plummer*, 229 Mich App 293, 300; 581 NW2d 753 (1998). Factors that may be considered to establish premeditation include: (1) the prior relationship between the defendant and the victims; (2) the defendant’s actions before and after the crime; and (3) the circumstances surrounding the killing, including the weapon used and the location of the wounds inflicted. *Id.* at 300-301. A pause between the initial homicidal intent and the ultimate crime may be sufficient to establish premeditation. The critical inquiry is whether the defendant had the time to premeditate and the capacity to do so. *Id.* at 301-302.

We review claims of instructional error de novo. *People v McGhee*, 268 Mich App 600, 606; 709 NW2d 595 (2005). “At a criminal trial, the judge functions both as a neutral arbiter between the two contesting parties and as the jury’s guide to the law. This role requires that the judge instruct the jury regarding the law applicable to the case . . . and fully and fairly present the case to the jury in an understandable manner.” *People v Moore*, 189 Mich App 315, 319; 472 NW2d 1 (1991) (internal citations omitted). “Instructions are read as a whole rather than extracted piecemeal to determine whether error requiring reversal occurred.” *McGhee, supra*. “Even if somewhat imperfect, there is no error if the instructions fairly presented the issues to be tried and sufficiently protected the defendant’s rights.” *People v Wolford*, 189 Mich App 478, 481; 473 NW2d 767 (1991). When the jury requests a supplemental instruction on a specific area, the trial judge is not obligated to give the instructions previously given. *People v Katt*, 248 Mich App 282, 311; 639 NW2d 815 (2001). The trial judge need only respond to the instruction requested. *Id.* The supplemental instruction is proper if responsive to the jury’s request and does not serve to mislead the jury in any manner. *Id.* Jurors are presumed to follow the instructions given by the trial court. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998).

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<sup>2</sup> Although defendant does not challenge the elements of felony-murder, the alternative theory of conviction, we nonetheless will address the merits of the claim of appeal.

In the present case, defendant contends, without citation to authority, that the supplemental instruction was improper because it “effectively removed from the trier of fact any consideration that defendant did not have time to think about beforehand the consequences of his actions.” The instruction as given by the trial judge acknowledged that premeditation may occur at different periods during a criminal process or at the commencement. The instruction did not foreclose from the jury’s consideration that defendant’s mindset may have changed at different periods during the thirty minute drive to the ex-wife’s residence. We cannot conclude that the supplemental instruction was improper where it responded to the jury’s request, did not mislead the jury, and reflected the circumstances and factors underlying premeditation. *Katt, supra*; *Marsack, supra*.<sup>3</sup>

Affirmed.

/s/ Karen M. Fort Hood  
/s/ Mark J. Cavanagh  
/s/ Kirsten Frank Kelly

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<sup>3</sup> For purposes of completeness, we note that there was ample evidence that defendant had the opportunity to take a “second look” in light of the lengthy drive to the residence and the conversation with his daughter prior to the actual shooting. *Marsack, supra*; *Plummer, supra*.