

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
January 15, 2013

v

JOSHUA MICHAEL HAMBLEY,
Defendant-Appellant.

No. 306998
Ottawa Circuit Court
LC No. 11-035460-FC

Before: GLEICHER, P.J., and O'CONNELL and MURRAY, JJ.

PER CURIAM.

Defendant Joshua Michael Hambley was convicted after a jury trial of first-degree premeditated murder, MCL 750.316(1)(a), and sentenced to life in prison. He appeals as of right. We affirm.

Defendant's sole argument on appeal is that there was insufficient evidence to convict him of first-degree murder. In making this argument, defendant concedes (as he must) that the prosecution proved the elements of second-degree murder, but nevertheless argues that the prosecution failed to present sufficient evidence of deliberation to sustain a first-degree murder conviction.

"We review de novo a challenge on appeal to the sufficiency of the evidence." *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). When evaluating this argument, "this Court reviews the evidence in a light most favorable to the prosecutor to determine whether any trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt." *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006).

The elements of first-degree premeditated murder are: "(1) the intentional killing of a human (2) with premeditation and deliberation." *People v Bennett*, 290 Mich App 465, 472; 802 NW2d 627 (2010). With regard to premeditation and deliberation, this Court has explained:

To premeditate is to think about beforehand; to deliberate is to measure and evaluate the major facets of a choice or problem. As a number of courts have pointed out, premeditation and deliberation characterize a thought process undisturbed by hot blood. While the minimum time necessary to exercise this process is incapable of exact determination, the interval between initial thought and ultimate action should be long enough to afford a reasonable man time to

subject the nature of his response to a “second look.” [*People v Plummer*, 229 Mich App 293, 300; 581 NW2d 753 (1998) (citation omitted).]

Formation of a plan surrounding the killing and evidence that “the defendant moved the victim to a more secluded area” are indicative of premeditation and deliberation. *People v Johnson*, 460 Mich 720, 733; 597 NW2d 73 (1999). These elements may also be shown by consideration of the following factors: “(1) the prior relationship of the parties; (2) the defendant’s actions before the killing; (3) the circumstances of the killing itself; and (4) the defendant’s conduct after the homicide.” *People v Orr*, 275 Mich App 587, 591; 739 NW2d 385 (2007), quoting *People v Schollaert*, 194 Mich App 158, 170; 486 NW2d 312 (1992). “Moreover, “[p]remeditation and deliberation may be inferred from all the facts and circumstances, but the inferences must have support in the record and cannot be arrived at by mere speculation.” *Plummer*, 229 Mich App at 301.

The evidence of premeditation and deliberation presented at trial was overwhelming.¹ First, the prosecution presented text messages sent several days before the murder wherein defendant stated that he needed to find a way to “get even with [the victim]” over the alleged assault. Second, defendant expressly stated his intention to kill the victim several times before the murder, and was asked repeatedly by his girlfriend to reconsider the plan. Third, during defendant’s telephone conversations with his girlfriend, he said that “it was taking longer for [the victim] to die than he expected” and that the victim was asking defendant to “call an ambulance or just kill me.” Defendant’s girlfriend could hear someone in the background and defendant admitted it was the victim. Thereafter, defendant confessed that he retrieved a shovel and struck the victim in the head. The medical examiner testified that if the victim received medical attention for his stab wounds, he would have survived. Fifth, defendant’s journal entries show that he considered “[w]hat to do about [the victim]” over at least a span of three days leading up to the murder. Sixth, in defendant’s written statement to police he wrote that he was upset about the alleged assault and “decided to kill [the victim]. For the rest of the week I decided on how to kill the victim.” These actions show that defendant considered his actions beforehand and “measure[d] and evaluate[d] the major facets of [his] choice or problem.” *Plummer*, 229 Mich App at 300 (citation omitted). The evidence easily allowed the jury to conclude that defendant had ample opportunity to take a “second look,” even after stabbing the victim, and, if he had done so, the victim’s life would have been spared. As such, a rational trier of fact could have found the elements of first-degree premeditated murder, MCL 750.316(1)(a), were proven beyond a reasonable doubt.

¹ Defendant properly concedes on appeal that “there was overwhelming evidence that defendant was present at [the victim’s] death, wielded a knife and shovel causing his death, and was responsible for burying [the victim] in a shallow grave.”

Affirmed.

/s/ Elizabeth L. Gleicher

/s/ Peter D. O'Connell

/s/ Christopher M. Murray