

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALBERT VINEY,

Defendant-Appellant.

UNPUBLISHED

June 26, 2003

No. 236356

Wayne Circuit Court

LC No. 00-004425-01

Before: Gage, P.J., and Wilder and Fort Hood, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of first-degree murder, MCL 750.316, assault with intent to commit murder, MCL 750.83, and possession of a firearm during the commission of a felony, MCL 750.227b.¹ Defendant appeals as of right, and we affirm.

Defendant's convictions arose out of the shooting death of his estranged wife and the multiple shooting of defendant's cousin, Darrell Powers, who survived the assault. Three weeks before the murder, defendant's wife left him because of an abusive marriage. When defendant tried to assault his wife in the presence of Powers, Powers intervened and precluded the assault from occurring. Ultimately, defendant's wife moved in with Powers. One week before the murder, defendant told his sister that he was going to kill his wife, then kill himself.

On the day of the shooting, defendant's sister saw defendant with a gun tucked in his pants. He asked his sister if he could borrow her car to run an errand. Defendant arrived at Powers' residence, purportedly to discuss reconciliation with his wife. After engaging in conversation and requesting money, defendant shot Powers in the neck. Defendant's wife and other family members began to flee. Defendant pursued his wife as she ran from the residence and shot her in the back. Defendant shot his wife again at close range and shot Powers for the third time after observing him on a neighbor's porch seeking help. These facts were established through eyewitness testimony given by Powell and family members of the decedent. After the shooting, defendant returned to his sister's home where he admitted that he killed his wife. Police apprehended defendant in a vehicle with two other males. During transport to the police

¹ Defendant was sentenced to concurrent terms of life imprisonment for the murder conviction and ten to twenty years' imprisonment for the assault with intent to murder conviction, to be served consecutive to two years' imprisonment for the felony-firearm conviction.

station, defendant admitted shooting his wife, but indicated that she deserved it because she was cheating on him. Defendant stated that he shot Powers because he “got in the way.” At trial, defendant disputed that the requisite intent for first-degree murder, premeditation and deliberation, was established.

Defendant first alleges that there was insufficient evidence to support his conviction for first-degree murder and, alternatively, that the trial court erred in denying his motion for a directed verdict of that charge. We disagree. When reviewing a challenge to the sufficiency of the evidence to support a conviction, the appellate court reviews the evidence in a light most favorable to the prosecution. *People v Sherman-Huffman*, 466 Mich 39, 40; 642 NW2d 339 (2002). The Court must consider whether the evidence at trial justified a rational trier of fact in finding that the elements of the crime were proved beyond a reasonable doubt. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).

To obtain a conviction for first-degree murder, the prosecution 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). “To premeditate is to think about beforehand; to deliberate is to measure and evaluate the major facets of a choice or problem.” *People v Plummer*, 229 Mich App 293, 300; 581 NW2d 753 (1998), quoting *People v Morrin*, 31 Mich App 301, 329; 187 NW2d 434 (1971). Premeditation may be established by a sufficient time period such that defendant had the opportunity to take a “second look” and may be inferred from the circumstances surrounding the killing. *People v Coy*, 243 Mich App 283, 315; 620 NW2d 888 (2000). Viewing the evidence in the light most favorable to the prosecution, there was sufficient evidence to establish the premeditation and deliberation necessary for first-degree murder. One week prior to the murder, defendant announced his intention to kill his wife. He arrived at Powers’ home with a gun. After shooting Powers, defendant had to pursue the victim through the home, broke down the bathroom door where the victim was hiding, and pursued the victim as she fled out of the home. Based on the evidence, defendant had the opportunity to take a second look. *Coy, supra*. Therefore, the trial court also properly denied defendant’s motion for a directed verdict on this charge.

Defendant next alleges that reversal of his conviction is warranted based on the admission of a prior bad act where the probative value of the evidence was substantially outweighed by the prejudicial effect. We disagree. A trial court’s decision to admit other acts evidence under MRE 404(b) will be reversed only where there has been a clear abuse of discretion. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998). To admit MRE 404(b) evidence, it must be offered for a proper purpose, it must be relevant, the probative value of the evidence must not be substantially outweighed by unfair prejudice, and a limiting instruction may be provided upon request. *People v VanderVliet*, 444 Mich 52, 55; 508 NW2d 114 (1993) amended 445 Mich 1205 (1994).

Defendant challenges the introduction of an argument between defendant and his wife that occurred three to four weeks before the shooting. The couple argued in Powers’ presence, and defendant tried to strike his wife with his fists. Powers stepped in between the two and told defendant not to hit her. This evidence was offered to establish the motivation for and planning of the shooting that would occur a few weeks later. Evidence of motive and opportunity is logically relevant to the crime of murder. *People v Ortiz*, 249 Mich App 297, 305-306; 642 NW2d 417 (2001). The examination of the probative value in light of any unfair prejudice is

merely a balancing process. *People v Starr*, 457 Mich 490, 498; 577 NW2d 673 (1998). The rule seeks to avoid unfair prejudice, not prejudice that stems from the abhorrent nature of the bad act. *Id.* at 500. Defendant's prior attempted assault on his wife and the subsequent intervention by Powers was introduced to demonstrate defendant's motivation for the assault on Powers before executing his plan to carry out the murder. The probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. *Id.*; *Ortiz, supra* at 306. The trial court did not abuse its discretion by admitting this MRE 404(b) evidence. *Crawford, supra*.

Affirmed.

/s/ Hilda R. Gage
/s/ Kurtis T. Wilder
/s/ Karen M. Fort Hood