

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEONARD THOMAS CARSTEN,

Defendant-Appellant.

UNPUBLISHED

October 16, 2003

No. 239448

Clare Circuit Court

LC No. 00-001641-FC

Before: Donofrio, P.J., and Sawyer and O’Connell, JJ.

PER CURIAM.

Defendant appeals as of right his jury conviction for first-degree premeditated murder, MCL 750.316(1)(a), for which he was sentenced to life imprisonment without parole. We affirm.

Defendant first argues that the prosecutor presented insufficient evidence of defendant’s premeditation and deliberation to support a first-degree murder conviction. We disagree. We review de novo a criminal defendant’s insufficient evidence claim. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). Because it is difficult to prove an actor’s state of mind, a prosecutor’s presentation of “minimal circumstantial evidence” regarding a defendant’s premeditation and deliberation will support a factfinder’s corresponding conclusion that the defendant considered the act’s ramifications and proceeded to kill with a cool head. *People v Ortiz*, 249 Mich App 297, 301; 642 NW2d 417 (2001).

We review the following factors to determine whether a prosecutor presented sufficient evidence of premeditation and deliberation: “(1) the previous relationship between the defendant and the victim; (2) the defendant’s actions before and after the crime; and (3) the circumstances of the killing itself, including the weapon used and the location of the wounds inflicted.” *People v Coddington*, 188 Mich App 584, 600; 470 NW2d 478 (1991). Regarding the last factor, the brutality of the crime is not as strong an indicator of premeditation as whether the defendant inflicted defensive wounds. *People v Johnson*, 460 Mich 720, 733; 597 NW2d 73 (1999).

The evidence indicated that the victim shared a close friendship with defendant’s girl friend and anticipated living with her in a house defendant was building for his girl friend and himself. On the night of the killings, the three were all drinking heavily at a cabin owned by defendant’s cousin. According to the testimony, an intense argument erupted among them and turned to whether the victim would live with defendant and his girl friend. The victim counseled

defendant's girl friend to leave defendant and return with her to Montana. Therefore, the evidence regarding defendant's relationship with the victim immediately before her homicide indicates that defendant intentionally killed her for her interference in his and his girl friend's relationship.

Testimony indicates that the three left the cabin while the argument continued, and according to a statement defendant provided police, he drove the two women away in his van. The evidence indicated, however, that defendant turned aside from the route home and then turned the van off a dirt road into a field. Moving a victim to a more secluded area strongly suggests premeditation and deliberation. *Id.* Defendant admitted that he owned the knife that caused the victim's injuries and had used it earlier that day. After the victim's death, defendant engaged in activities designed to hide his crime and himself, including disposing of evidence and changing his appearance. These actions also indicate premeditation and deliberation. *People v Haywood*, 209 Mich App 217, 230; 530 NW2d 497 (1995). Therefore, defendant's actions before and after the killing indicate he premeditated and deliberated.

Finally, the circumstances of the killing itself indicate premeditation and deliberation. Defendant inflicted several defensive wounds on the victim's hands, and his deadly cuts fell on the back of her neck. Defensive wounds and cuts to vital areas, such as the neck, indicate premeditation. *Id.*; *People v Berry*, 198 Mich App 123, 128; 497 NW2d 202 (1993). Furthermore, the evidence indicated that defendant received a serious cut near where he stopped the van, walked south several hundred feet to where his girl friend crashed the van trying to get help, and then returned north to where his victim had ventured into the road. According to the physical evidence, the jury could conclude that defendant then dragged the victim from the road into a nearby wooded area and inflicted another severe wound there. Defendant's trek from one end of the crime scene to the other and back provided him with ample time to take the required "second look" and reconsider his actions. *Johnson, supra* at 733. Therefore, the prosecutor presented sufficient evidence to support defendant's first-degree murder charge.

Next, defendant argues that the trial court erroneously failed to instruct the jury according to CJI2d 7.23 despite the fact that he presented evidence regarding the victim's violent nature. We disagree. We review de novo whether a trial court properly declined to give an instruction supported by the facts. *People v Hubbard*, 217 Mich App 459, 487; 552 NW2d 493 (1996). The trial judge acts as a jury's source for legal guidance, so the judge must provide the relevant law in an instructive manner. *People v Moore*, 189 Mich App 315, 319; 472 NW2d 1 (1991). Trial courts are required to present the jury with the elements of the charged crime and, if supported by the evidence, may not omit important issues or defenses. *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000). However, a trial court does not err by omitting an instruction that substantially repeats instructions found elsewhere in the charge. *Id.*

In this case, the requested jury instruction merely informed the jurors that they could consider evidence that the trial court instructed them to consider elsewhere in the charge. Therefore, the trial court did not fail to properly instruct the jury.

Finally, defendant argues that the trial court erred when it failed to strike a police officer's testimony that defendant made derogatory comments regarding the decedents after his arrest. We disagree. We review for an abuse of discretion a trial court's decision whether to exclude a given piece of evidence. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998).

Defendant argues that he was prejudiced by the prosecution's failure to promptly inform the defense about the officer's anticipated testimony. The trial court, however, provided defendant a full opportunity to discover the circumstances surrounding the statement, which the prosecutor had only learned about a few hours earlier. Through this additional discovery, the trial court provided the defense with sufficient facts to completely discredit the officer's testimony, which it did. Therefore, the trial court did not abuse its discretion when it provided defendant with a remedy that more than compensated for any injury the prosecutor's minor discovery delay caused.

Affirmed.

/s/ Pat M. Donofrio
/s/ David H. Sawyer
/s/ Peter D. O'Connell