

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FREDDIE TRAIL NASH,

Defendant-Appellant.

UNPUBLISHED

September 15, 2005

No. 255874

Ingham Circuit Court

LC No. 03-001003-FC

Before: Meter, P.J., and Murray and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of first-degree murder, MCL 750.316 and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to consecutive terms of life imprisonment for the first-degree murder conviction and two years' imprisonment for the felony-firearm conviction. We affirm.

I. FACTS

In the early morning of February 9, 2003, police were notified of three gunshots heard in the vicinity of Richmond and Mary Street in Lansing, Michigan. Upon arriving, police discovered the victim near her vehicle with multiple gunshot wounds. I'mogene Thomas, the mother of the victim, identified the body as her daughter, Teresa Nash. The autopsy concluded that the victim had been shot at close range three times, and that the third and final gunshot to the victim's head was immediately incapacitating and fatal. A fresh snowfall allowed the police to photograph shoe prints at the residence of the victim, leading from the vehicle to the victim, and then away from the scene. These shoe prints were later determined to be from the kind of boots defendant was known to wear. The victim's twelve year old daughter testified that prior to the murder she had overheard a voice she identified as defendant talking with the victim downstairs at the victim's residence shortly before the gunshots. The victim's daughter also heard a cell phone ring, and she heard defendant answer the phone and say "he got this and he'll be there. He don't need no help with nothing." Testimony from a representative of defendant's cell phone company placed defendant's cell phone in the area of the murder. A Friend of the Court enforcement specialist testified that she was familiar with the victim and defendant and that there was a dispute about child support between them.

II. SUFFICIENCY OF THE EVIDENCE OF PREMEDITATION

Defendant first argues that there was insufficient evidence to support his conviction of first-degree premeditated murder, specifically contending that there was no evidence of premeditation or deliberation. We disagree.

A. Standard of Review

In reviewing a sufficiency of the evidence claim, we review “whether the evidence, viewed in a light most favorable to the people would warrant a reasonable juror in finding” that all the elements of the crime were proven beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000). “The elements of first-degree [premeditated] murder are that the defendant killed the victim and that the killing was . . . ‘willful, deliberate, and premeditated.’” *People v Bowman*, 254 Mich App 142, 151; 656 NW2d 835 (2002), quoting MCL 750.316(1)(a). A finding of premeditation and deliberation requires there to be a lapse in time for a defendant to take a second look before acting. *People v Plummer*, 229 Mich App 293, 300; 581 NW2d 753 (1998). “Premeditation and deliberation may be established by evidence of ‘(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 Abraham*, 234 Mich App 640, 656; 599 NW2d 736 (1999), quoting *People v Schollaert*, 194 Mich App 158, 170; 486 NW2d 312 (1992).

B. Analysis

We conclude that there was sufficient evidence that the killing was premeditated and deliberated. Testimony presented at trial showed that defendant and the victim were recently divorced and were involved in a dispute over child support. Viewing the evidence favorably to the prosecution, on the morning of the murder, the victim’s daughter heard the victim and defendant talking in her home and heard defendant say “he’s got this and he’ll be there. He don’t need help with nothing.” The victim’s daughter testified that her mother came up the stairs, grabbed her keys, said she would be right back, and presumably left with defendant. Shortly after, the victim’s body was found. Additionally, the circumstances of the killing itself support a finding of premeditation and deliberation. The victim was shot three times; once at close range, which was only a flesh wound and not fatal, another time in the arm, which again was not fatal if the bleeding would have been stopped, and another shot to the head, which the medical examiner testified would have been immediately incapacitating. Witnesses who heard the gun shots testified that the shots were fired between two and five seconds apart. There was also evidence of traces of blood and hair fibers found in the roof of the inside of the victim’s car and the front driver’s side window had been broken. The victim’s body was found in a front yard near where her car was found. From this evidence, the jury could have inferred that the victim was first shot in the car and that the victim was running away from the shooter when the incapacitating shot hit her in the head. This would have shown that defendant thought about his choice before hand and had time to measure and evaluate this choice. *People v Morrin*, 31 Mich App 301, 329; 187 NW2d 434 (1971) (“To premeditate is to think beforehand; to deliberate is to measure and evaluate the major facets of a choice or problem”).

III. NEW TRIAL

Defendant next argues that the trial court erred in denying his motion for a new trial. We disagree.

A. Standard of Review

We review the trial court decision on a motion for a new trial for an abuse of discretion. *People v Lester*, 232 Mich App 262, 271; 591 NW2d 267 (1998). In order to obtain a new trial based on newly discovered evidence, “a defendant must show that: (1) ‘the evidence itself, not merely its materiality, was newly discovered’; (2) ‘the newly discovered evidence was not cumulative’; (3) ‘the party could not, using reasonable diligence, have discovered and produced the evidence at trial’; and (4) the new evidence makes a different result probable on retrial.” *People v Cress*, 468 Mich 678, 692; 664 NW2d 174 (2003), quoting *People v Johnson*, 451 Mich 115, 118 n 6; 545 NW2d 637 (1996); MCR 6.508(D).

B. Analysis

Defendant presented new evidence of a photograph his mother found of him wearing boots similar to, but defendant argues distinct from, a pair of boots the police believed were the same brand that made the footprints found near the victim’s body. Defendant’s girlfriend testified at trial that she had seen defendant wear boots similar to the ones police had obtained. After seeing this picture, she indicated in an affidavit that the shoes in the photograph were the shoes she testified about. The trial court denied defendant’s motion concluding that this evidence would not have made any difference in the outcome of the trial.

We agree with the trial court’s conclusion. The footprint evidence was not the only piece of evidence that linked defendant to the murder. The victim’s daughter testified that she heard her mother and defendant talking in her home on the morning her mother was killed. The victim’s daughter testified that she heard the two talk for a while, including her mother call defendant by his name, before the victim left the home. The prosecutor also presented evidence of defendant’s cell phone records, which placed defendant in the vicinity of the crime scene at the time of the murder. Regarding the actual footprint evidence, defendant’s girlfriend only testified that she saw defendant wearing shoes similar to those police had obtained, which is the same testimony that she would give at a new trial. Additionally, after reviewing both the photograph of defendant wearing the shoes and the photograph of the shoes police obtained, we fail to see a significant difference between the two. In fact, the soles of the shoes appear to be quite similar. As such, we agree with the trial court that defendant failed to show that this new evidence would have made “a different result probable on retrial.” *Cress, supra* at 692.

Affirmed.

/s/ Patrick M. Meter
/s/ Christopher M. Murray
/s/ Bill Schuette