

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
November 23, 2010

v

ROBERT JAMES HOWARD,

Defendant-Appellant.

No. 294650
Wayne Circuit Court
LC No. 2008-11733-01

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

PER CURIAM.

Defendant appeals as of right his bench trial conviction of first-degree premeditated murder, MCL 750.316(1)(a). The court sentenced defendant to natural life in prison. We affirm.

I. FACTS

This case arises out of the failed relationship between defendant and the victim, Laci Green, which ended in her death on May 7, 2008. A few weeks before her death, Green had attempted to end her eight-year relationship with defendant, a relationship during which defendant had periodically abused her both physically and verbally. Defendant admitted he was upset with Green over how she had treated him during the breakup, and on the date in question, took a cab to Green's condominium subdivision in Westland where Green lived with her parents. Defendant, who had been calling Green's cellular phone, arrived around 12:45 a.m. Notably, Green's mother indicated that Green had returned home that night around 12:30 a.m.

At 2:30 a.m., Green's mother was awakened by her dog barking, and over the course of the next hour observed defendant walking through her yard and even heard the sliding glass door closing downstairs. When Green's mother subsequently noticed Green was not in her room, she and her husband confronted defendant outside. In response to their question as to whether he had seen Green, defendant replied, "I hope you don't think I had anything to do with this." Green's father called the police and, upon their arrival, defendant left Green's home without explanation. Police then called defendant on his cell phone. Defendant, who sounded as though he was running, gave conflicting reports about his whereabouts until police eventually located him walking in Green's subdivision about 300 yards from where Green's body was eventually found. Defendant told police that he had been looking for Green—with whom he was angry—since 1:30 a.m.

Around 7:00 that morning, police found Green’s body in a field near her home lying face up, covered in grass clippings, with her hands over her head. The condition of her body, clothing and lines in the grass indicated that the body was dragged to that location. Wounds on the body were consistent with manual strangulation. Notably, defendant—whom the police found with grass clippings on his shoes and pants—admitted to police after his subsequent arrest that he thought Green was strangled; however, defendant made this claim before the cause of death had been determined.

In finding defendant guilty of first-degree premeditated murder, the trial court called particular attention to the history and nature of defendant’s violence against Green, and to both his peculiar behavior and statements as well as a voice message defendant left Green on the night in question. On the issue of premeditation, the court observed that the act of strangulation involved time sufficient to give a second look and that the remaining circumstantial evidence showed beyond a reasonable doubt that defendant planned to murder Green. The instant appeal ensued.

II. ANALYSIS

A. EVIDENTIARY ERROR

On appeal, defendant first argues that the trial court erred in admitting the testimony of three of Green’s friends who recounted Green’s statements of physical abuse she suffered from defendant. According to defendant, such testimony did not reflect Green’s state of mind and therefore constituted inadmissible hearsay under MRE 803(3). We review the court’s decision to admit evidence for an abuse of discretion, but whether evidence is admissible under a particular rule of evidence is a question of law that we review de novo. *People v Moorer*, 262 Mich App 64, 67; 683 NW2d 736 (2004).¹

As an initial matter, it is clear that the statements constitute hearsay because the declarant, i.e., Green, made them outside of the trial proceedings, and they were offered for their truth. MRE 801. Thus, their admissibility hinges on the applicability of a hearsay exception. MRE 802; *People v Barlett*, 231 Mich App 139, 159; 585 NW2d 341 (1998).

Regarding the applicability of the exception in MRE 803(3), we agree with defendant that that rule does not permit admission of the statements at issue. Indeed, that exception expressly permits only the admission of “a statement of the declarant’s then existing state of mind, emotion, sensation, or physical condition” MRE 803(3); *People v Coy*, 258 Mich App 1, 14; 669 NW2d 831 (2003). However, that MRE 803(3) would not allow for admission of these statements is of no moment, for the trial court admitted the statements under MRE 803(24).

¹ Defendant also claims admission of these statements violated the Confrontation Clause. However, defendant conclusively states this position with little or no citation to authority, so we consider the argument abandoned. *People v Harris*, 261 Mich App 44, 50; 680 NW2d 17 (2004).

The trial court did not err in finding that in the absence of the other categorical hearsay exceptions, the statements at issue satisfied the residual hearsay exception of MRE 803(24). *People v Katt*, 468 Mich 272, 289; 662 NW2d 12 (2003).

[E]vidence offered under MRE 803(24) must satisfy four elements to be admissible: (1) it must have circumstantial guarantees of trustworthiness equal to the categorical exceptions, (2) it must tend to establish a material fact, (3) it must be the most probative evidence on that fact that the offering party could produce through reasonable efforts, and (4) its admission must serve the interests of justice. Also, the offering party must give advance notice of intent to introduce the evidence. [*Id.* at 279.]

The trial court's thorough analysis exhibited a full consideration of the relevant criteria. We conclude that Green's statements about the abuse to her co-worker, Sedoka Akra, and her friend, Ashley Hubert, easily satisfy the circumstantial guarantees of trustworthiness hurdle. Akra testified that Green informed her about defendant's verbal abuse and that he had choked her to the point of unconsciousness. Notably, Akra acted as a confidant to Green and Green was very emotional when she relayed her difficult predicament with defendant. Furthermore, Green's explanation of these events reveals that she did not divulge this information for selfish gain or to tarnish defendant's reputation. On the contrary, Green expressed her reluctance and fear in ending the relationship and indicated that she felt compelled to hide the true nature of this relationship from her parents. As the trial court noted, such factors are strong indicators of trustworthiness considering the circumstances.

Similarly, Green's statements to her friend, Ashley Hubert, regarding defendant's abuse are replete with guarantees of trustworthiness considering the proximity in time between the abuse and Green's relaying that abuse to Hubert (i.e., immediately after Green's lunch with defendant and immediately after arriving at work), Green's volatile emotional state when relaying this information, Green's expression of fear of defendant, and the fact that Green indicated she would bite her arm or hit herself so that defendant would not be the one hurting her. As with Akra, it is clear that Green did not divulge this personal information out of dishonesty or an ulterior motive, and we are satisfied that the level of trustworthiness of these statements is equal to the other categorical hearsay exceptions.

Additionally, as the statements related directly to defendant's motive as well as to whether the killing was premeditated and deliberate (i.e., elements of first-degree murder), they tended to establish a material fact. *People v Feezel*, 486 Mich 184, 197; 783 NW2d 67 (2010) (elements of an offense are always material) (opinion by CAVANAGH, J.). The evidence was also undoubtedly the most probative the prosecution could present on this issue considering that defendant and Green were the only witnesses to these events. And the admission of this evidence served the interests of justice as it helped explain the nature of Green's relationship

with defendant. Thus, since this testimony satisfied the requirements of MRE 803(24), its admission was not in error.²

Defendant alternatively claims that the statements were admitted in violation of MRE 404(b). However, in criminal actions involving domestic violence, the Legislature has acted to permit the admission of evidence of a defendant's commission of other acts of domestic violence "for any purpose for which it is relevant, if it is not otherwise excluded under Michigan rule of evidence 403." MCL 768.27b. What is more, MCL 768.27b trumps MRE 404(b)'s prohibition against the admission of propensity evidence in these types of cases. *People v Pattison*, 276 Mich App 613, 615-616; 741 NW2d 558 (2007). For purposes of this statute, domestic violence includes causing or attempting to cause physical harm to an individual with whom the defendant has or has had a dating relationship. MCL 768.27b(5)(a)(i) and (b)(iv).

Here, defendant's prior striking and choking of Green falls squarely within the parameters of MCL 768.27b as it is relevant to show defendant's propensity for violence towards his girlfriend (thereby making it more likely that he was the killer and that he had the requisite intent). Additionally, this evidence is not otherwise unfairly prejudicial under MRE 403. To be sure, that defendant had choked and struck Green on previous occasions pales in comparison to the severity of Green's death by strangulation. Thus, we can hardly conclude that such evidence would arouse the fact-finder's bias, sympathy, anger, or shock and unfairly prejudice defendant. *People v Goree*, 132 Mich App 693, 702-703; 349 NW2d 220 (1984). The trial court properly admitted and considered evidence of defendant's prior physical abuse of Green in deciding defendant's guilt.

Next, defendant asserts that the testimony of police officers concerning statements made by Green's father and another police officer constituted inadmissible hearsay. As stated before, our review is de novo concerning the legal question of admissibility and for an abuse of discretion concerning the court's ultimate decision whether to admit the evidence. *Moorer*, 262 Mich App at 69.

Concerning Green's father, Officer Robert Fruit testified that upon arriving at Green's home, Green's father revealed that Green had been abducted. We find no error here. Indeed, as the court properly ruled, this evidence was offered not for its truth, but to explain the officer's subsequent action in beginning a formal search for Green. "[A] statement offered to show why police officers acted as they did is not hearsay." *People v Chambers*, 277 Mich App 1, 11; 742 NW2d 610 (2007).

Similarly, Officer Christopher Gazdecki's testimony that he heard from Officer Fruit that defendant denied entering Green's house further explains why the police placed such a great deal

² Although defendant challenges the admission of Stacy Nowicki's testimony regarding Green's statements of abuse, defense counsel agreed with the court that her testimony "[met] the threshold of admissibility." Thus, this issue is waived with respect to that witness. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000).

of emphasis on investigating defendant during the night in question despite defendant's repeated assertion that he merely was assisting in the search effort.³ Therefore, this testimony was not hearsay and its admission was appropriate. *Id.*

B. SUFFICIENCY OF THE EVIDENCE

Finally, defendant claims that the evidence was insufficient to support his conviction.

Generally, we review a challenge to the sufficiency of the evidence in a bench trial de novo and in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proved beyond a reasonable doubt. All conflicts with regard to the evidence must be resolved in favor of the prosecution. Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime. [*People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005) (quotation marks and citations omitted).]

The elements of first-degree premeditated murder are that the defendant killed the victim and that the killing was "willful, deliberate, and premeditated." MCL 750.316(1)(a); *People v Bowman*, 254 Mich App 142, 151; 656 NW2d 835 (2002). Premeditation and deliberation require sufficient time for a second look and may be inferred from minimal circumstantial evidence. *Id.*; *People v Ortiz*, 249 Mich App 297, 301; 642 NW2d 417 (2001). "Premeditation may be established through evidence 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 Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995).

Considering the circumstantial evidence tying defendant to Green's murder, his sufficiency argument cannot stand. For starters, defendant's reaction to his broken relationship with Green and his peculiar conduct around the time of Green's death support the requisite intent of first-degree murder. Indeed, on the night in question, defendant arrived at Green's house angry and convinced Green was dating another man. Despite telling police he wanted to meet with Green that night, defendant had a cab drop him off several blocks from Green's house rather than going directly to Green's house. After calling Green several times, talking with her for 15 minutes on the phone, and wandering around her house for a brief period, defendant left Green a voicemail message vowing not to beat her anymore and requesting to speak with her. Defendant even admitted entering Green's house for a brief period until he heard the voice of Green's mother,⁴ and once police arrived, defendant fled the scene and provided the police

³ Defendant had previously told Gazdecki that he did, in fact, enter Green's house on the night in question.

⁴ Although the trial court struck defendant's confession of this fact after his arrest, defendant's prior admission of this fact to Officer Gazdecki remained part of the record.

conflicting reports regarding his whereabouts. When police eventually did find defendant, he was within 300 yards of where Green's body was eventually located.

When this evidence is considered in conjunction with: defendant's nonresponsive, but exculpatory statement to Green's parents that "I hope you don't think I had anything to do with this"; his assertion to police that Green was strangled prior to any determination of Green's cause of death; his admission that he discarded the shoes Green would wear for fear they could implicate him in the crime; the fact that defendant had fresh grass clippings on his pants and shoes similar to the clippings found on Green's face; and perhaps most damning, the fact that defendant had a history of abusing Green, which included choking her to the point of unconsciousness, it is reasonable to infer that defendant arrived at Green's house on the night in question with the motive and intent to deliberately kill her and that he had abundant time to take the proverbial second look. *People v Glover*, 154 Mich App 22, 29; 397 NW2d 199 (1986). In sum, sufficient evidence was presented to support defendant's conviction of first-degree murder.

Affirmed.

/s/ Peter D. O'Connell
/s/ Richard A. Bandstra
/s/ Christopher M. Murray