

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
November 17, 2015

v

LAKSHMINIVASA RAO NERUSU,

Defendant-Appellant.

No. 323016
Oakland Circuit Court
LC No. 2013-248288-FC

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

PER CURIAM.

A jury convicted defendant of the first-degree murder of his wife and two children, rejecting his claim of insanity or mental illness. Over defendant's objection, several gruesome autopsy photographs depicting the knife wounds found on the victims' decomposed bodies were admitted in evidence. Defendant raises three appellate arguments: the introduction of the photos denied him a fair trial, the prosecution failed to prove his criminal intent, and the great weight of the evidence demonstrated that his mental illness exonerated him from criminal responsibility. We conclude that any error in admitting the photos was harmless, the evidence sufficed to prove premeditation, and that the jury's verdict did not contravene the great weight of the trial evidence. We affirm.

I.

Defendant admitted that he killed his wife, Jayalakshmi Nerusu, and their two children. During his testimony, he took no issue with the overwhelming evidence marshaled by the prosecution that the murders were premeditated, triggered by defendant's professional failures and his long-standing anger with his wife.

On the day before the killings, defendant performed extensive computer research regarding human anatomy and dissection, and investigated airline schedules. After the children left for school the next morning, defendant described that he and Jayalakshmi had "an overheated argument." Defendant first slapped and then began stabbing Jayalakshmi, inflicting at least 38 wounds and using more than one knife. Jayalakshmi apparently fought back, as defendant sustained cuts on his hands and face. After Jayalakshmi died, defendant walked to a nearby drugstore and bought Band-Aids. He then returned to the family's apartment to await the buses that brought his children home from school. During those hours, defendant rented a car and made arrangements with a travel agency to purchase a one-way ticket to India. When

defendant's daughter arrived, he cut her throat. A short time later, his son met the same fate. Defendant fled to India the next day, after covering the three bodies and turning off the heat. Four-and-a-half years later he was captured and returned to Michigan.

Dr. Kanu Virani, Deputy Chief Oakland County Medical Examiner, testified regarding the victims' autopsies. Before Dr. Virani took the stand, defense counsel objected to the admission of some of the autopsy photographs, arguing that their prejudicial impact substantially outweighed any probative value. The trial court examined all of the autopsy photos and commented, "in 18 years I have not seen photos as graphic and gruesome as this." The prosecution urged that introduction of all the photos was necessary to prove "[t]he premeditation, deliberation and . . . because of the fact he was on the computer the night before, researching anatomy human dissection. . . . It also undercuts his insanity defense." The trial court excluded two of the challenged photographs and overruled defendant's objection to the others.

Dr. Virani described in considerable detail the locations and characteristics of the knife wounds sustained by each victim, referring to the photographs when asked to do so by the prosecutor. He recounted that Jayalakshmi had stab or cutting wounds on her neck, chest, abdomen, thighs and back, and defensive wounds on her hands, forearm, and upper arm. A close-up photograph admitted in evidence demonstrated (in Dr. Virani's words) "the major injury or we call it slashing cuts on her neck, there are two of them," and a stab wound "near the edge of the mandible." The neck wounds were fatal, Dr. Virani explained, as they severed Jayalakshmi's airway and allowed blood to be "aspirated into the lungs." Dr. Virani used similarly explicit language to portray the knife injuries inflicted on defendant's children. Defendant's daughter sustained a "large gapping wound" from one side to the other of her neck, which severed her trachea, carotid and jugular arteries. The son's fatal wound transected one carotid artery and one jugular artery; another wound on the back of the boy's neck "went all the way to the spine and expos[ed] the spinal cord."

Defendant elected to pursue a defense of insanity, despite that the two forensic examiners who evaluated him found no support for that diagnosis. During his trial testimony, defendant admitted that he killed his wife and children, conceded that he had performed the computer research indicating premeditation, and generally agreed to having performed all of the acts attributed to him by the prosecutor. His wife was "always blaming me," defendant declared, and did not support him emotionally. Defendant claimed to have "blacked out" during the stabbings, and asserted that when he committed the murders, he "had to be insane." He confessed that while in India, his "primary concern was making sure [he was not] caught."

In rebuttal, the prosecutor called Dr. Craig Lemmen, a forensic psychiatrist employed by the Center for Forensic Psychiatry. Dr. Lemmen opined that defendant lacked any symptoms of mental illness and "appreciated the wrongfulness of his actions" when committing the crimes. Dr. Lemmen concluded that defendant was not insane at the time of the murders.

The jury found defendant guilty of three counts of first-degree murder, rejecting alternative verdicts of not guilty, guilty of second-degree murder, not guilty by reason of insanity, guilty of first-degree murder but mentally ill, or guilty of second-degree murder but mentally ill.

II.

Defendant first contends that the admission of all the autopsy photos was cumulative, inflammatory, and resulted in a verdict tainted by passion. The prosecution insists that the photos were relevant, as they “depicted the nature and the extent of the injuries” to the victims, and additionally because they corroborated Dr. Virani’s testimony. While we agree that the photographs to which defendant objected were at least minimally relevant, they were also highly repugnant and indisputably prejudicial. Any assistance provided by the photos in proving premeditation or deliberation was slight at best, particularly in light of defendant’s concessions.¹ In other words, the pictures had precious little tendency to prove any disputed issue in this case. Moreover, it remains unclear that the photographs actually added anything to Dr. Virani’s extensive, explicit descriptions of the wounds. But regardless of whether any unfairly prejudicial aspect of the challenged photos outweighed their minimal probity, their admission was harmless.

A nonconstitutional, preserved evidentiary error does not supply “a ground for reversal unless it affirmatively appears that, more probably than not,” the error undermined the reliability of the verdict. *People v Douglas*, 496 Mich 557, 566; 852 NW2d 587 (2014). Assuming without deciding that the challenged photographs were more prejudicial than probative, their admission was not outcome determinative.

The prosecution produced prodigious and compelling evidence that defendant premeditated and deliberated the killings, and that his actions reflected a capacity to appreciate the nature and wrongfulness of his conduct. Not a single thread of the evidence introduced to support that defendant planned the murders was disputed by the defense. Although defendant asserted that he was mentally ill when he committed the crimes, Dr. Lemmen’s testimony solidly refuted this claim. Furthermore, on appeal, defendant has challenged the admission of only a handful of the autopsy photos shown to the jury. We find it inconceivable that a reasonable jury would have acquitted defendant had the trial court withheld the allegedly objectionable photos from view. Accordingly, even were we to credit defendant’s theory that the introduction of the photos contravened MRE 403, any error in admitting them was entirely harmless.

III.

Defendant alternatively contends that insufficient evidence of intent supported his convictions. According to defendant, the jury erred by rejecting his testimony that he “suffered from mental imbalance” when he killed his family. Defendant further insists that he established an insanity defense by a preponderance of the evidence, and that the prosecution failed to prove his criminal responsibility for the deaths beyond a reasonable doubt. These arguments blend a challenge to the sufficiency of the evidence supporting first-degree murder with a claim that the jury’s verdict contravened the great weight of the evidence substantiating defendant’s insanity or mental illness. We reject both theories.

¹ Defendant testified out of order, before Dr. Virani appeared.

In evaluating defendant's sufficiency claim, we consider the evidence in the light most favorable to the prosecution to determine whether any rational jury could have found that the elements of the crime were proven beyond a reasonable doubt. *People v Sherman-Huffman*, 466 Mich 39, 40; 642 NW2d 339 (2002). We must draw all reasonable inferences and make credibility choices in support of the jury's verdict. *People v Gonzalez*, 468 Mich 636, 640-641; 664 NW2d 159 (2003). Difficult as it is to meet this standard, a defendant raising an insanity defense bears an even heavier burden.

Legal insanity is an affirmative defense requiring proof that, as a result of mental illness or being mentally retarded as defined in the mental health code, the defendant lacked "substantial capacity either to appreciate the nature and quality or the wrongfulness of his or her conduct or conform his or her conduct to the requirements of the law." [*People v Carpenter*, 464 Mich 223, 230-231; 627 NW2d 276 (2001), quoting MCL 768.21a(1).]

A defendant bears the burden of proving his insanity by a preponderance of the evidence. MCL 768.21a(3). Once a defendant produces evidence of an affirmative defense, the question of whether the defendant has adequately supported that defense by a preponderance of the evidence is for the jury to decide. *People v Kolanek*, 491 Mich 382, 411-412; 817 NW2d 528 (2012). We may disturb a jury's verdict only where the evidence preponderates so heavily against the verdict that a serious miscarriage of justice would otherwise result. *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998).

Dr. Lemmen offered the only expert opinion presented to the jury, and he strongly rejected the notion that defendant suffered from a mental illness when he killed his family. Defendant had no history of psychiatric illness. His "symptoms," Dr. Lemmen pointed out, were entirely self-reported. Dr. Lemmen rejected that defendant's asserted inability recall the murders corresponded with any form of mental illness. This evidence more than adequately supported the jury's rejection of defendant's insanity claim.

Similarly, we find no merit in defendant's argument that the prosecution failed to prove the intent element of first-degree murder. Defendant's medical research and the careful plans to rent a car and book a one-way airline ticket strongly substantiated that defendant premeditated the killings. A defendant's specific intent to kill may be inferred from any facts in evidence. *People v Unger*, 278 Mich App 210, 223; 749 NW2d 272 (2008). "Because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient to establish a defendant's intent to kill." *Id.* Proof of premeditation and deliberation requires only "sufficient time to allow defendant to take a second look." *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995). The finder of fact may distill persuasive evidence of intent from: "(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." *Id.* Defendant told the jury that he had no basis for disputing that he had premeditated the murders, although he couldn't remember doing so. We conclude that the prosecution presented sufficient evidence to allow a rational jury to conclude that the elements of first-degree murder were proven beyond a reasonable doubt.

In summary, the jury believed that defendant planned and intended to kill his family and either was not mentally ill or maintained the capacity to appreciate that his actions violated the law. Because the evidence amply supported the jury's verdict, defendant's convictions must stand.

We affirm.

/s/ Douglas B. Shapiro
/s/ Peter D. O'Connell
/s/ Elizabeth L. Gleicher