

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PALOK GASHAJ,

Defendant-Appellant.

UNPUBLISHED
September 23, 2004

No. 248658
Oakland Circuit Court
LC No. 02-185958-FC

Before: Fitzgerald, P.J., and Neff and Markey, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of first-degree premeditated murder, MCL 750.316, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to life imprisonment without the possibility of parole for the first-degree premeditated murder conviction and to two years in prison for the felony-firearm conviction. We affirm.

Defendant's only issue on appeal is that the prosecution presented insufficient evidence to support his conviction by failing to establish the elements of first-degree premeditated murder. We disagree. In sufficiency of the evidence claims, this Court reviews the evidence *de novo* in a light most favorable to the prosecutor and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 516; 489 NW2d 748 (1992). Circumstantial evidence and the reasonable inferences that arise from the evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

To establish the offense of first-degree premeditated murder, the prosecution must prove that the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate. MCL 750.316(1)(a); *People v Kelly*, 231 Mich App 627, 642; 588 NW2d 480 (1998). Premeditation and deliberation characterize a thought process undisturbed by "hot blood." *People v Plummer*, 229 Mich App 293, 300; 581 NW2d 753 (1998). Premeditation and deliberation require sufficient time to allow the defendant to take a second look and can be inferred from the circumstances surrounding the killing. *Id.* Factors that may be considered to establish premeditation include: (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. *Id.*

The prosecution produced sufficient evidence of premeditation and deliberation to support defendant's first-degree premeditated murder conviction. Specifically, a finding of premeditation was supported by the circumstances surrounding the killing. The evidence shows some time span between defendant's initial homicidal intent and the ultimate action. Defendant testified that one or two minutes after he decided to shoot his wife, Zamira Gashaj, he fired the first two shots at Zamira and missed. Zamira reacted by jumping out of the bed and asked, "Why are you doing this to me?" Zamira then shoved defendant, but defendant shoved Zamira to the floor and shot her in the head and all over her body as she lay on the floor. Defendant's testimony supports the conclusion that he did not instantly or impulsively attack Zamira, or inflict the deadly wounds within only seconds. A reasonable jury could find that between the first two shots that missed Zamira and those that killed her, there was sufficient time for defendant to take a second look at the nature of his actions. Furthermore, defendant took time to reload the gun, which would have given him another opportunity to contemplate his actions before firing more shots.

Defendant's testimony regarding the shooting was supported by the investigator's testimony that two bullets were found in the headboard and the pillow and that no blood was found in bed, indicating defendant missed with the first two shots that were aimed at Zamira when she was in bed. Other spent bullets and cartridges were recovered near Zamira's body on the floor. The blood splatter stains were low near the bottom of the dresser, which indicated that Zamira was on the floor when she was shot.

Zamira's autopsy also revealed that she received seven gunshots to her body, including three gunshots to the head and one gunshot to the neck. Six of the seven gunshots would have been fatal. Of the three gunshots to the head, two were behind the right ear and would have been instantaneously fatal. The third gunshot would have been fatal within a few minutes. The location of the wounds indicates that the shots were directed at causing death. The medical examiner also testified that residue was found, indicating that defendant shot Zamira, while she was lying on the floor, at close range. The wound by the right ear was made while the gun was touching the skin or within two inches of the ear. A large amount of soot around and inside the wound to Zamira's neck indicates that the shot was fired at close range. The jury could certainly infer that firing the shots at Zamira's body, especially her head, and pulling the trigger at close range is a deliberate, cold-blooded act that suggests premeditation. This is especially so where defendant first shot at Zamira twice and missed, and later emptied the gun and reloaded the gun to fire more fatal shots.

In addition, defendant's statement to the police shows that for more than one week, defendant and Zamira had been arguing about whether she should quit her job. After the alleged argument with Zamira and his brother-in-law, Roland Popaj, on the morning of April 15, 2002, around 5:00 a.m., defendant put the loaded gun in his pocket and paced around the house, checking the doors and windows. Defendant testified that for approximately two hours he was contemplating whether to kill Zamira and what the consequences of his killing of Zamira would be for his children. Defendant decided to shoot Zamira around 7:30 a.m., went into the bedroom and started shooting. We find that two hours between the alleged argument at 5:00 a.m. and the shooting at 7:30 a.m. was sufficient time for cool reflection. Furthermore, on the stand, defendant admitted that the shooting was not accidental and it was his intention to kill Zamira. This was significant evidence from which a reasonable jury could infer that defendant

premeditated and deliberately planned to kill Zamira. In sum, all the above evidence was sufficient to support defendant's conviction of first-degree premeditated murder.

Defendant argued that the evidence showed that he either acted in self-defense or that he shot Zamira because he panicked and lost control. Here there is no evidence that defendant was in any danger of death or serious bodily harm. Zamira was not armed and was lying on the floor when defendant shot her multiple times. Defendant was not justified in using deadly force to defend himself. Even defendant's version of the events did not support a self-defense claim. The prosecutor met the requisite burden of presenting evidence from which a rational trier of fact could conclude that all the elements of first-degree murder were proved beyond a reasonable doubt.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Janet T. Neff

/s/ Jane E. Markey